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ABSTRACT

The purpose of the handbook is to provide as complete a discussion as possible of all major Indian education laws and regulations and other education laws that affect Indian education. The intent is to increase knowledgeable Indian involvement in the educational process and the handbook is intended primarily for local use by Indian parents, Indian advisory groups, tribal education committees, Indian organizations and institutions, and others concerned with Indian education. The information is presented largely in question-and-answer format within a general outline. Detailed discussions of Title IV (PL 92-318 and PL 93-380) and the Johnson O'Malley Act include histories of the laws and some definitions, and stress participation by parents and community, eligibility criteria, and application procedures. Other programs discussed, usually in question-and-answer format, are PL 81-874, PL 81-815, Title VII, School Nutritional Programs (breakfast, lunch, and milk programs), and Title I of ESEA and Bilingual Education. (SB)

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INDIAN EDUCATION TRAINING, INC.

HANDBOOK

TITLE IV, PUBLIC LAW 92-318

JOHNSON O'MALLEY

PUBLIC LAW 874 -- PUBLIC LAW 815

SCHOOL NUTRITION PROGRAMS

OTHER RELATED FEDERAL EDUCATION LAWS

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HANDBOOK

ON INDIAN EDUCATION

FOREWORD

This handbook has been prepared by the staff of Indian Education Training, Inc., an Albuquerque, New Mexico based corporation which is Indian owned and operated, receiving funding and contracts from Federal and private sources to provide technical assistance and training services to agencies, organizations and institutions across the nation who have a primary or major concern in quality education for Native American people. The handbook is prepared for use by Indian parent advisory groups, tribal education committees, Indian organizations and institutions and others concerned with the contemporary issues involved in Indian education.

It is the intention of Indian Education Training, Inc. to include in this handbook discussion of all major Indian education laws and regulations as well as discussions of other education laws which affect Indian education, so that we can present as complete a picture of Indian education as possible.

The handbook contains several parts. The first part deals *with a discussion of Title IV, Public Law 92-318, the Indian Education Act of 1972, and Public Law 93-380, the Education Amendments of 1974, which extend Title IV programs. The second part will deal with a discussion of the Johnson O'Malley Act. Other parts of the handbook will discuss such laws and regulations related to Public Law 874, Public Law 815, Title VII, ESEA, Bilingual Education, USDA School Nutrition Programs, etc.*

It is under these circumstances and in this time frame that this handbook was prepared. Without a doubt, there will be continuing developments, modifications, additions, deletions, etc., in the regulations, guidelines and policies governing these laws. As they occur, Indian Education Training, Inc. will be continuously monitoring such activities and will modify and correct information in the handbook.

This third edition is designed so that changes, deletions, additions, etc., can be made as they occur. Holders of the handbook are advised to write to Indian Education Training, Inc., giving their addresses so that they can be listed to receive notices that a new edition is ready for purchase. Such an effort, we hope, will prove beneficial to all those who use this handbook as a means of creating a better informed Indian community for greater educational opportunities for our Indian children.

We sincerely hope that the publication of the handbook, the format used, and the information contained herein will meet the *informational needs of the reader and will be utilized effectively and efficiently by all concerned with providing Native Americans with the best educational opportunities.*

We, of Indian Education Training, Inc., will certainly welcome any suggestions regarding this handbook, its format, content, and use. We hope that many suggestions will be received to develop a better, more comprehensive and useful handbook.

INDIAN EDUCATION TRAINING, INC.
TITLE IV TRAINING

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INTRODUCTION

The general goals of Indian Education Training, Inc. have been to involve members of the Indian community in the education process, i.e., program planning, development, monitoring and evaluation. The target groups have been:

1. Education committees;
2. Tribal councils;
3. Parents;
4. Students;
5. Teachers;
6. Teacher aides;
7. Tribal education staff members.

Our primary job is training local Indian education committees. Training and research in this area have taken two basic forms: (1) local workshops which deal with specific programming and budgets within that particular school district; (2) out-of-State workshops which deal with Federal laws and regulations on education funds and State Plans for the distribution of Johnson O'Malley funds.

The basic nature of our training has to do with informing people about Federal laws and regulations -- what local information is necessary, and how to go about obtaining it. We believe, and our experience in the past confirms, that the real Indian involvement in schools is going to begin with local knowledge of what has been given in their name, what has been planned for them, and by contrast, what they could plan for themselves. We are interested in seeing Indian parents involved in all aspects of school life, but we believe that Indian parents, like most other parents, will not become involved in the schools simply because they enjoy the activity of "being involved." They must see clear and positive benefits that can be traced directly to their participation.

We have concentrated primarily on compensatory programs, not because we believe that particularly well-groomed tails are capable of wagging dogs, but because compensatory programs provide relatively clear structures for the beginnings of involvement. A secondary but important fact is that the overwhelming majority of Indians employed by schools are hired for compensatory programs.

In the course of attempting changes in local education programs, the local Indian community must deal primarily with the administration and school board of their district and individual school. But standing to one side are several other agencies -- State Departments of Education, particularly Indian education and Title I divisions, the Bureau of Indian Affairs, the US Office of Education, supervisory and teaching staffs in the schools, tribal governments, Indian organizations, and, when Indian education funds are handled by tribal or inter-tribal organizations, those contracting groups. All of these auxiliary organizations can either be helpful, obstructive, or have no impact at all. Part of our training deals with the process of persuading, cajoling, and coercing these other agencies into playing a supportive role.

Indian Education Training, Inc. sees a definite need to train and work with local education committees. In many regions of the country, these committees have been in existence for more than six years, and the total number of committees increases considerably every year. Much of this increase is due to recent Federal legislation requiring parent committees. This is an important movement. It provides a potential device for parental participation in the school and creates a representative group answerable to the parents and not simply to the school system.

In spite of this, the committees have a serious built-in limitation. They cannot compete with school administrators on essential questions of budgets, educational programs, statutes and regulations. The school administrators, on the other hand, are specialists, and fulltime paid specialists at that. They have staff members who can do research for them. Even in the rare situations where education committees are composed of people who give education a clear top priority, the committee members who have other jobs and family responsibilities cannot compete with school officials.

In normal practice, the system unfolds like this: If parents talk about Johnson O'Malley, the school people talk about Title I; if the parents talk about Title I, the school people talk about Public Law 874, and so on. The water gets progressively deeper. By the time the school people get to the whole picture, the only people left in the water are the ones who handled the distribution of the life-jackets.

The fundamental premise of Indian Education Training, Inc. is that this situation cannot and will not be reversed until essential information, and ways in which to use it, come from additional sources outside the school system. What happens after people are informed can only be answered on a local district level. The parents have to develop goals and strategies to alter their school system. This part of it cannot be done without training and experience.

We have been able to work in various parts of the country, but most of our training activities have been concentrated in New Mexico, Arizona and Oklahoma. Essentially, we transfer our experiences in New Mexico, not as a theoretical strategy, but as a program that has produced some concrete results. Factors which remain constant nationally are:

1. Federal laws;
2. Federal regulations;
3. The need for specific information about the State and local school districts;
4. The need for a system to get that information;
5. The need for a local education committee that has a workable organizational structure, continuity, and the potential both to straighten out irregularities and develop programs.

In addition to training, we've worked in a consulting role on the revision of various State Plans and analyses and revisions of various Indian education regulations. We are available for workshops and technical assistance in any part of the country.

At present, the staff of Indian Education Training, Inc. consists of education trainers, researchers, and material development specialists.

TITLE IV, PUBLIC LAW 92-318

INDIAN EDUCATION ACT OF 1972

HISTORICAL INFORMATION

The genesis of the Indian title is somewhat complex. The Indian education provisions were included in the original version of S.659 which itself immediately ran into problems because of a jurisdictional dispute with the Senate Committee on Interior and Insular Affairs. The reason for this was that all Indian affairs, including Indian education, with the exception of PL 874 and PL 89-10 (referred to as the Elementary and Secondary Education Act of 1965, or simply ESEA) funds, have always come through the Interior and Insular Affairs Committees of Congress, and this particular Indian education section of S.659 came through the Senate Committee on Labor and Public Welfare under the sponsorship of Senators Mondale and Kennedy.

S.659, originally introduced in 1971, was referred to as the "Higher Education Act of 1971" and could legitimately be introduced by the Senate Committee on Labor and Public Welfare. However, because it dealt with Indian affairs (Indian education) and touched on some already existing statutory authorizations for the Department of Interior, the jurisdictional dispute occurred. The Indian education provisions were then broken out of S.659 and reintroduced as S.2482. Containing slight changes, S.2482 was jointly reported out by the Committee on Labor and Public Welfare and the Committee on Interior and Insular Affairs, and passed by the Senate in October of 1971 with no opposition. In the meantime, there were a number of other Indian education measures introduced. Some of the measures incorporated parts of S.2482. These legislative proposals, however, did not progress too well, and consequently, never did surface to enactment. While a companion bill to S.2482 was being considered in the House of Representatives, S.659 was also being reconsidered as the "Education Amendments of 1972." Having been through both houses of Congress, S.659 was closer to enactment than any other education bill. For this reason, Indian education provisions identical to those in S.2482 were again included as Title IV of S.659. S.659 was reported out on May 22, 1972. It was passed and the bill was signed into law by the President on June 23, 1972. S.659 then became Public Law 92-318 and thus, we have an Indian education Title (Title IV) under this law.

TITLE IV, PUBLIC LAW 92-318

GENERAL INFORMATION

The Indian Education Act of 1972 became Title IV of Public Law 92-318 with the signature of the President on June 23, 1972.

When the original Indian Education Act (Title IV of Public Law 92-318) was passed in 1972 it had five main parts, four of which added amendments to legislation already in force. Those amendments authorized supplementary funds for Indian education at the pre-school, elementary, secondary and adult education levels. In 1974 this law was itself further amended with some changes and significant additions.

An important note to local Indian education groups is that a part of this legislation stresses parental participation, but more important, mandates approval of grant application by committees composed of the parents of participating Indian children, teachers and where applicable, secondary school students.

Title IV, Public Law 92-318 (as amended) is probably the most comprehensive Indian Education Act in history.

The following is a brief outline of what is contained in Title IV, Public Law 92-318. These parts will be discussed in greater detail in the pages following the outline. Amendments as they affect each part are also discussed:

I. PART A -- Financial Assistance to Local Educational Agencies for the Education of Indian Children (*amends Public Law 874)*

A. This part adds a new program to Public Law 874 (Impact Aid), by providing financial assistance to local educational agencies (LEA's) for the development and operation of supplementary elementary and secondary school programs designed to meet special educational needs of Indian children.

B. This program provides entitlement funds to LEA's in the amount of the full average per pupil expenditure for the State times the total number of Indian children enrolled. An LEA is eligible if it has at least 10 Indian children enrolled, or if such Indian children constitute 50 percent of the enrollment. This requirement does not apply to the States of Alaska, California, or Oklahoma, or to an LEA located on or near an Indian reservation.

C. In addition to the amounts authorized for grants to LEA's, five percent of the total amount had been set aside for entitlement payments to schools on or near Indian reservations which are not LEA's or have not been LEA's for more than three years. The 1974 amendment increased this amount to ten percent of the total amount.

D. All applications under Part A must be first approved by a parent council elected by parents of participating Indian children.

II. PART B -- Special Programs and Projects to Improve Educational Opportunities for Indian Children *(amends Title VIII of Public Law 89-10, ESEA)*

A. Part B of the law adds a new section (810) to Title VIII, ESEA, to authorize a series of broad grant programs to Indian tribes, organizations and institutions, federally supported schools and State and local educational agencies.

B. Programs for the following purposes are authorized under Part B:

1. *To support planning, pilot and demonstration projects which are designed to test and demonstrate the effectiveness of programs for improving educational opportunities for Indian children.*

2. *To assist in the establishment and operation of programs providing services not otherwise available, and the development and implementation of exemplary programs.*

3. *To assist in the establishment and operation of pre-service and in-service training programs for personnel serving Indian children.*

4. *To encourage dissemination of information and evaluation of educational programs.*

C. *Indian tribes and organizations, State and local educational agencies and institutions of higher education are eligible grantees for certain programs under this part. This is discussed further in the question and answer section.*

D. *Part B was amended by Public Law 93-380, Title VI, Part C in 1974 by extending the program to fiscal year 1978 and by making additional requirements to applications from private nonprofit elementary and secondary schools.*

E. *Public Law 93-380, Part C of Title VI also adds two new sections:*

422 -- Special education training programs for teachers of Indian children;

423 -- Fellowships for Indian students.

These additions are further discussed in the question and answer section for Part B.

III. PART C -- Special Programs Relating to Adult Education for Indians

(amends Title III of ESEA Amendments of 1966, adult education)

A. *A new section (314) is added to the Adult Education Act directing the Commissioner of Education to administer a program of grants to Indian tribes, institutions and organizations, State and local educational agencies, to support planning, pilot and demonstration projects which are designed to evaluate and demonstrate Indian adult education programs.*

B. *Public Law 93-380, Part A of Title VI, extends appropriation for Part C to fiscal year ending prior to July 1, 1978.*

IV. PART D -- Office of Indian Education

A. *Part D establishes, in the Office of Education, a bureau level Office of Indian Education to administer the Indian education provisions of this law. The law requires that the new Office of Indian Education be headed by a Deputy Commissioner of Indian Education.*

B. *Part D also establishes a National Advisory Council on Indian Education consisting of 15 members who are Indians and Alaska Natives appointed by the President of the United States. The Advisory Council members are to be chosen from a list of nominees submitted by Indian tribes and organizations.*

NOTE: Parts A, B and C of this Title all come under the authority of this new Office of Indian Education and the National Advisory Council.

V. PART E -- Miscellaneous Provisions *(amends Title V of the Higher Education Act of 1965 and Title VII of the Elementary and Secondary Education Act of 1965)*

A. *Part E creates a new section (532) under Part D of EPDA (Education Professions Development Act) by setting aside five percent of Part D, EPDA funds for the training of personnel to be teachers in BIA-operated or supported schools.*

B. *Part E also amends the ESEA of 1965 to qualify BIA-operated or supported schools as local educational agencies.*

C. *Additionally, Part E under Title IV defines the term Indian as "any individual who (1) is a member of a tribe, band, or other organized group of Indians, including those tribes, bands, or groups terminated since 1940 and those recognized now or in the future by the State in which they reside, or who is a descendant, in the first or second degree, of any such member, or (2) is considered by the Secretary of the Interior to be an Indian for any purpose, or (3) is an Eskimo or Aleut or other Alaska Native, or (4) is determined to be an Indian under regulations promulgated by the Commissioner, after consultation with the National Advisory Council on Indian Education, which regulations shall further define the term 'Indian'."*

TITLE IV, PUBLIC LAW 92-318

PART A

I. GENERAL INFORMATION

Q. What is the intent of Part A?

A. *Part A, Title IV of Public Law 92-318 (The Indian Education Act) is an amendment to Public Law 874 (Impact Aid) and is intended to "provide financial assistance to local educational agencies" for the development and implementation of supplementary educational programs designed to meet the special educational needs of Indian students.*

Q. Does the amendment mean that Part A of Title IV will replace Public Law 874?

A. *No. Part A adds a new section to Public Law 874 in the following manner: In the past, Public Law 874 funds were received by school districts which enrolled students whose parents lived and/or worked on Federal property. Indian students usually qualify a school district for Public Law 874 monies because they live on Indian land which is nontaxable. Thus, 874 payment to a school district, because of Indian enrollment, would be considered the Indians' tax payment to the school district. These funds (874) are considered "noncategorical" and therefore are put into what is known as the general operating fund. The school district may use this money for any purpose they desire. This particular portion of Public Law 874 remains as is.*

In addition to this, Part A of Title IV establishes a new section which is categorical in that monies under Part A (or Title III, Public Law 874) can be used only for the specific purpose intended, supplementary special education programs for Indian students. These funds can be received by a school district only if it enrolls Indian students.

Q. According to the above answer, isn't Part A, Title IV the same as Johnson O'Malley?

A. *Many different interpretations tend to suggest that services under Johnson O'Malley funding will be duplicated by Title IV, Part A funding. However, there are some important differences suggested and required which should be stressed.*

1. *Definitions of Indian are quite different under each Act (Johnson O'Malley and Title IV).*

2. *Financial allocations are also different in each program.*

3. *Eligibility for funding under the Johnson O'Malley program is such that an Indian tribe, organization or educational institution can apply and receive a grant. Under Part A of Title IV, only a local educational institution is eligible to apply except that a small percentage of the appropriations is set aside for special cases (this is discussed later). However, for the major portion of Part A of Title IV, only local educational agencies are eligible. This is a very important note to make because many educational programs which are not provided in the school could be provided in the local communities. We, of Indian Education Training, Inc., have been suggesting that where school districts qualify for funding under Title IV, Part A, Johnson O'Malley funds should be made available to local Indian tribes or Indian education groups to carry out education programs for Indian students at the community level.*

Q. How much money is available under Part A?

A. *In Federal programs, the terms "authorized appropriations" and "actual appropriations" often mean two entirely different figures. This is clearly illustrated by what happened under FY 1973 Part A funding. The "authorized" amount would be determined by a formula set forth under the Act. This has been estimated to have been approximately $180 million for the nation. The "actual" Part A appropriations for FY 1973 was $11.5 million and $25 million for FY 1974. These amounts, $11.5 million and $25 million , were all that were available to school districts for FY 1973 and FY 1974.*

Under legislative authorization of PL 92-318, five percent of the total Part A budget was set aside specifically for nonlocal educational agencies. This amount was increased by PL 93-380 to ten percent of the total Part B budget.

Q. What is the formula for allocation to school districts?

A. *The amount of the grant to which a local educational agency is entitled is determined by taking the amount of average per pupil expenditure for each State and multiplying it by the total number of Indian students enrolled, i.e., Albuquerque Public Schools in New Mexico:*

Average State Per Pupil Expenditure	*x*	*Number of Indian Students Enrolled*	=	*Amount of Entitlement*
$732/pupil		*1,819 Indian students*		*$1,331,508 **

* *This would be the maximum entitlement if full funding was available through 100% appropriations.*

Q. How long will Title IV, Part A be in existence?

A. *That would depend on what is meant by "existence." First, let us consider this answer: With the signing of Public Law 92-318, Title IV, Part A became an amendment to Public Law 874, which is already a statute. Public Law 874 having an indefinite authorization could only be terminated by an Act of Congress; so, with this interpretation, Part A of Title IV can exist as long as Public Law 874 exists. Financial existence could mean a totally different thing, however, because no appropriations would mean no program and thus, Title IV, Part A could only exist on paper such as Public Law 815 has been for quite some time now. In this sense, Title IV, Part A could only exist as long as appropriations are made each year. A good example would be the following: While Public Law 92-318, Title IV, Part A added a new Title III to Public Law 874,it authorized appropriations only for three fiscal years, ending July 1, 1975. Under this Act funding was authorized only up to July 1, 1975. Public Law 93-380 extended this authority for appropriations up to July 1, 1978. If Part A, Title IV is to continue beyond July 1,1978,it would have to have extension acts of Congress.*

II. PARENT PARTICIPATION AND COMMUNITY INVOLVMENT

Q. What provisions are made for parent and/or community involvement?

A. *The Indian Education Act states that an application for a grant under this Title may be approved only if:*

1. *It has been developed "in open consultation with parents of Indian children, teachers, and, where applicable, secondary school students, including public hearings at which such persons have had a full opportunity to understand the program for which assistance is being sought...*

and with the participation and approval of a committee composed of, and selected by, parents of children participating in the program...teachers, and, where applicable, secondary school students of which at least half the members shall be such parents."

2. An application should set forth such policies and procedures as will insure that the program for which assistance is sought will be operated and evaluated in consultation with and the involvement of parents of the children and representatives of the area to be served, including the committee established under this Title.

Q. Can the school district superintendent or board set up this committee and appoint its members?

A. No. Regulations from 45CFR, Part 186.16(a) state: "The parent committee shall be selected by parents of Indian children to be served, teachers and , where the program or project will serve secondary school students, Indian secondary school students." Appointment of this committee shall be by nominations or selection procedures appropriate to the Indian community to be served, such as sanctioned by the tribal governor where necessary. "This committee shall be known as the 'parent committee'." (45CFR, Part 186.15)

Q. What are the functions of the parent committee?

A. The parent committee must be involved in the overall operation of the program under Title IV, Part A including needs assessment, priority determination for meeting such needs, approval of grant requests and evaluation of programs relative to Indian education achievements.

Q. What is the responsibility of the school district to the parent committee?

A. 45CFR, Part 186 states the applicant shall consult with the parent committee on all matters pertaining to Title IV, Part A educational programs and set forth policies and procedures assuring that the program will be operated and evaluated in consultation with and the involvement of parents of children and representatives of the area to be served.

The local educational agency must provide:

1. A repository for the community containing documentation concerning parent committee functions;

2. *Dissemination and interpretations of bilingual proceedings and materials where necessary;*

3. *An established role for the committee in needs assessment and priority determinations for meeting such identified needs;*

4. *Access by the committee to budget and financial reports and analyses to determine that grant funds are being used to supplement the level of funds available to the community for the education of Indian children;*

5. *Planned activities to assure review of application implementation, on-going review of program or project activities or services, and continuing analysis for evaluation and dissemination activities and other related programs and projects;*

6. *Formal mechanism for written approval, by a majority of the committee voting in open session, of the application and of projects and activities to be implemented by the applicant which affect the community to be served.*

Q. Can Part A funds be used to carry out the above mentioned responsibilities of the parent committees?

A. *Certainly, if the committee determines this to be an essential part of the program. In about 99% of cases where parents are given a major responsibility such as this, we often find a serious lack of the resources to enable them to carry out such functions effectively Giving the responsibility to parents and not giving them any enabling resources, financial or otherwise, has been the schools' greatest excuse and a source on which to blame parents for failure.*

Indian education committees established for Title IV programs can program part of the Title IV budget for committee expenses to include travel and per diem, baby sitting expenses, registration at workshops and/or training, supplies, etc.

Q. How are parent committee vacancies filled?

A. *Depending on the circumstances, vacancies may be filled in one of several ways. If the parent committee has established a charter or specified a procedure for filling vacancies elsewhere, these procedures should be followed. If no guidelines are available, the parent committee may either: (1) Appoint members to fill the vacancies; (2) Call for a general meeting for the purpose of nominating and electing members; or (3) Ask the tribal council, where appropriate, to appoint members. (Note for the Fiscal Year of 1975, the Office of Indian Education is requesting that procedures for filling vacancies be outlined in the proposal.)*

Q. What if only two or three parents are willing to serve on the parent committee?

A. *The only requirement concerning the composition of the parent committee is that at least 50% of the membership be parents of Indian children to be served. The rest of the committee could then be made up of teachers, and where applicable, secondary school students. If only two or three parents are willing to serve, this automatically limits the number of other members on the board (students and teachers), i.e., three parents, limit of others is three.*

Q. Who may attend parent committee meetings?

A. *All interested community members may attend the meetings. The parent committee may wish to elect ex-officio members — people who can participate in committee discussion but who have no voting power. Any interested community member may qualify as an ex-officio member of the parent committee.*

Q. Should the public hearing required for Title IV assistance be limited to the discussion of Title IV alone?

A. *No. The development of supplemental programs, such as under Title IV, requires that the planners (PC) are aware of and consider the total school program as well as other alternatives and options to assure that the best results may be achieved and that it avoids unnecessary duplication and possible supplanting of other school programs.*

Q. Can a school board member serve on the parent committee?

A. *A member of the school board can be a parent committee member only if he is a parent of an Indian child to be served by the program.*

Q. Who qualifies as a parent of an Indian child?

A. *In addition to the natural parents of Indian children, non-Indian parents who have legally adopted Indian children and grandparents who are the legal guardians of Indian children may serve on the parent committee. In areas where tribal custom recognizes that grandparents are equally responsible for the education of children, grandparents may serve on the parent committee. However, foster parents are not eligible for parent committee membership.*

Q. How often must a parent committee be elected?

A. *Each application requires that the total procedure be followed. This means that for each Part A application an election for the parent committee must be held.*

Q. Can teacher aides be elected to the parent committee?

A. *Teacher aides can serve on the parent committee only if they are parents of Indian children who will be served by the program, or if they are certified teachers.*

Q. If a Title IV parent committee is incorporated, can it utilize the services of GSA?

A. *Regardless of whether or not the committee is incorporated, GSA services cannot be utilized, nor can surplus GSA equipment be received.*

III. ELIGIBILITY CRITERIA

Q. Who is legally eligible to apply for Title IV, Part A funds?

A. *Eligibility falls under two broad categories. First, a local educational agency (LEA) is eligible to apply for assistance. An LEA must have at least 10 Indian children enrolled, or an Indian enrollment which is at least 50% of the total enrollment. This requirement does not apply to the states of Alaska, California, and Oklahoma, or to any LEA located on or near an Indian reservation. Secondly, a tribe or other Indian organization can qualify for assistance if they operate a school which meets the definition of an LEA (a board of education or other legally constituted local school authority having administrative control and direction of free public education in a reservation, county, township, independent, or other school district located within a State. Such term includes any State agency which directly operates and maintains facilities for providing free public education) or if they operate a school which is a nonlocal educational agency (the governing body of a nonprofit institution or organization of an Indian tribe which operates for Indian children an elementary or secondary school or school system located on or near a reservation).*

NOTE: 10% of all Part A funds have been legislatively set aside for funding of eligible non-LEA's.

Q. How does the HEW 441, Civil Rights Compliance respond to the exclusion of any other students benefiting from a proposal project involving only Indian students?

A. *The explanation of OE Form HEW-441 (HEW-441A) answers this question in the last paragraph of 2A..."It does not, however, include distinctions on the ground of race, color, or national origin determined by the responsible Department official to be necessary to the conduct of research or experimental programs having as their primary objective the discovery of new knowledge concerning special characteristics of particular racial or ethnic groups."*

A. What is Title IV's working definition of the term "Indian"?

A. *Sec. 453 of Title IV Act defines an Indian to be:*

1. *A member of a tribe, band or other organized group of Indians, including those tribes, bands, or groups terminated since 1940 and those recognized now or in the future by the State in which they reside or who is a descendant, in the first of second degree, of any such member;*

2. *One who is considered by the Secretary of the Interior to be an Indian for any purpose;*

3. *An Eskimo, Aleut or other Alaska Native, or;*

4. *One who is determined to be an Indian under regulations promulgated by the Commissioner, after consultation with the National Advisory Council on Indian Education.*

Q. What, if any, efforts are to be made to monitor any of the projects for possible assistance to other school districts in assessing needs?

A. *The US Office of Education will utilize OE staff personnel, regional staff personnel, and State Department of Education personnel to assist in the monitoring of Title IV projects.*

Q. If a Title IV program includes a culturally related component and the hiring of staff is required, can the school district and parent committee specify Indian preference in the job announcement?

A. *In the Morton vs. Mancari decision of June 17, 1974, the Supreme Court ruled that given the special relationship which exists between the Federal government and the Indian community, Indian preference is an acceptable policy. In* *delivering the Court's opinion, Justice Blackmun noted that Indian preference is a longstanding component of the government's Indian program and represents an effort to further the cause of Indian self-government. Furthermore, Indian preference does not violate Title VI of the Civil Rights Act of 1964 because historically, Indian preference has been considered an exception on the basis of the unique relationship between the Indian community and the Federal government.*

Q. Can preschool programs be funded under Title IV?

A. *Title IV money can only be used for free public education. Regulation 186.2 defines free public education as "...education which is provided at public expense, under public supervision and direction, and without tuition charge, and which is provided as elementary or secondary school education in an applicable State. Free public education may, if in accordance with State law, include education below grade one meeting the above criteria." Only if a preschool program meets these requirements can it be funded under Title IV.*

Q. Can a parent committee member be employed by the Title IV program?

A. *When the question of hiring a committee member arises, care should be taken to avoid possible conflicts of interest. With this in mind, special attention must be given to Subpart N, 100a.250 of the Rules and Regulations found in the Federal Register, Vol. 38, No. 213, Part III, November 6, 1973 which states that: "A person who is a public official, officer, or member of, or who is otherwise associated with a recipient, may not participate in an administrative decision with respect to the recipient's project, if such decision can be expected to result in any benefits or remuneration including without limitation a royalty, commission, contingent fee, brokerage fee, or other benefit, to him or to any member of his immediate family." If the member has talents not available from other sources and is the only qualified person for the position, he may wish to resign from the committee. Any specific circumstances regarding a particular case should be submitted to the Office of Indian Education for review and a final ruling.*

Q. Are Indian students receiving Title IV assistance ineligible for assistance under Title I of the Elementary and Secondary Education Act of 1965?

A. *No, the receipt of Title IV funds does not make a child ineligible for assistance under Title I. Title I is a more* *comprehensive program, including as "eligible" all "educationally deprived children." This would include Indian children, where appropriate. Title IV, on the other hand, is designed to meet the special educational needs of Indian children only. A student can therefore receive Title I and Title IV assistance simultaneously.*

IV. APPLICATION PROCEDURES

Q. What information is required in the application for Part A funds?

A. There are several basic requirements which are as follows:

1. *The problems to be addressed;*
2. *The overall objectives of the proposed program or project;*
3. *The manner in which the proposed program or project will be carried out to achieve the proposed objectives;*
4. *The type and size of the proposed staff (including the staff training proposed);*
5. *The amount of grant being requested;*
6. *The number of Indian children involved and the number of children to be affected by the successful outcome of the program or project;*
7. *The degree to which the program or project addresses the particular educational needs of the Indian children involved;*
8. *The relative isolation (geographic and/or social) of the Indian community to be served by the program or project;*
9. *The degree to which the Part A funded program will be coordinated with other similar activities in existence that are designed to serve the educational needs of Indian children;*
10. *A description of administrative methods to ascertain that the program or project administration is carried out in a proper and efficient manner;*

11. *A description of how Indian parents and Indian communities will be involved in all phases of the project.*

Q. What are some of the criteria which the Office of Education uses to determine the feasibility of proposed projects for Part A funds?

A. *In reviewing and evaluating an application, the reviewer utilizes the following as general criteria:*

1. *The adequacy of the qualifications and experience of the personnel designated to carry out the proposed project;*
2. *The adequacy of facilities and other resources;*
3. *The reasonableness of cost to the anticipated results;*
4. *The expected potential for utilizing project results in other areas for similar purposes;*
5. *The sufficiency of the size, scope, quality and duration of the program to secure productive results;*
6. *The soundness of the proposed plan of operation (this includes the extent to which the objectives of the proposed project are sharply defined, clearly stated, capable of being attained by the proposed procedures and capable of being measured and evaluated); also, the provision for adequate evaluation for determining the extent to which the objectives are achieved.*

Q. To whom should any inquiries concerning, Title IV, Part A be addressed?

Please contact:

Division Director
Division of Local Educational
Agency Assistance
US Office of Education
Office of Indian Education
ROB 3, Room 3662
7th and D Streets, SW
Washington, DC 20202

or

Indian Education Training, Inc.
5510 Domingo Road, NE
Albuquerque, New Mexico 87108
Telephone (505) 265-7957

Q. What is recommended to insure that applicants meet a specific closing date deadline?

A. *Reiterate the closing date notices as published in the Federal Register with respect to mailing deadlines and receipt by the Application Control Center of the US Office Office of Education and correct addressing.*

US Office of Education
Application Control Center
ROB 3, Room 5673
400 Maryland Avenue, SW
Washington, DC 20202

Q. How is the State average per pupil expenditure computed and by whom for each State?

A. *The average per pupil cost is based on the report of current expenditures certified for purposes of Public Laws 81-874 and 89-10, 1971-1972 as prepared by the Office of Education's National Center for Educational Statistics. The expenditure per pupil in average daily attendance (ADA) "for a local educational agency (LEA) shall be the aggregate current expenditures during the second fiscal year preceding the fiscal year for which the computation is made, for all of the local educational agencies in the State in which the agency is located, plus any direct current expenditures by such State for the operation of such agencies (without regard to the sources of funds from which either of such expenditures are made), divided by the aggregate number of children who were in average daily membership in elementary and secondary schools for whom such agencies provided free public education during the second preceding fiscal year." (45CFR, Regulation 186.21c)*

Q. How does a school district go about being certified for the number of Indian school children enrolled in the district?

A. *Local school districts must notify either the Chief State School Officer (CSSO) or his designee in writing as to the number of Indian school children in their district. The CSSO transmits this certified number of Indian school children for the eligible school districts in writing to* *the US Office of Education, Office of Indian Education, Part A Division, to constitute the official certified number utilized in the computerized data band for printouts.*

Q. Are there examples of types of projects that might benefit the Indian children on the basis of size, location, etc.?

A. *A compilation based on prior years' programs for Title IV approved projects is constantly being updated to provide a computerized printout reflecting these types of information. Additionally, other school districts and parent committees might be consulted to exchange ideas.*

Q. Can two or more school districts submit one application and combine the entitlements to benefit a greater number of Indian children?

A. *This can be done only if the school board and superintendent are the same for the districts involved. Otherwise, each eligible school district must submit a separate application. However, two eligible school districts may submit separate applications involving the same project but including individual components which the school districts may find mutually beneficial and combine funds received under each grant to fund and operate the project together.*

V. FINANCIAL ACCOUNTABILITY

Q. What type of financial records are to be kept relating to an approved program and how long must these records be retained?

A. *A recipient of Title IV, Part A assistance must keep intact and accessible records pertaining to the receipt and expenditure of Federal funds (and to the expenditure of the recipient's contribution to the cost of the project, if any, in accordance with Section 434 (a) of the General Education Provisions Act), including all accounting records and related original and supporting documents that substantiate direct and indirect costs charged to the award. These records must be retained for a period of three years after the date of the submission of the annual expenditure report. Exceptions to this are records for nonexpendable personal property which was acquired with Federal funds (these must* *be retained for three years after its final disposition) and those records which are involved in any claim or expenditure which is questioned by Federal audit (these should be retained until a resolution of the audit question has been achieved).*

Q. When should a request for a budget revision be submitted?

A. *Budget revisions are necessary whenever:*

1. *The revision results from changes in the scope or objectives of the project;*

2. *The budget is over $100,000 and the cumulative amount of the transfer is $10,000 or five percent of the grant;*

3. *The budget is $100,000 or less and the cumulative amount of the transfer is five percent of the budget;*

4. *The revision entails the transfer of amounts budgeted for indirect costs to absorb increases in direct costs;*

5. *The revision pertains to the addition of items requiring prior approval.*

Budget revisions which do not require the approval of the Office of Indian Education include:

1. *The use of funds in the furtherance of project objectives over and above the minimum share included in the approved budget;*

2. *The transfer of amounts budgeted for direct costs to absorb authorized increases in indirect costs.*

In either of these cases, the Office of Indian Education would be notified of the revision so that the appropriate change can be noted in the file. Also, any budget revision, regardless of which group it falls under, must be approved by the parent committee.

Q. What are some factors which could change the scope or objective of a project?

A. *Depending upon the local situation, there are a variety of reasons why the parent committee may decide to revise their project. Typical examples are:*

1. *Not being able to find qualified personnel;*

2. *Lack of adequate space to conduct the project;*

3. *Lack of interest in the program on the part of the students;*

4. *No significant progress being made by the students participating in the program;*

5. *To include another component in the program.*

Q. If a Title IV project operates a program in which goods such as beadwork, paintings, etc., are sold, what is to be done with the income resulting from such sales?

A. *This decision should be made by the parent committee when developing the program. If the committee feels the children should receive this income as an incentive, they should stipulate this in the proposal. The committee also has the option of reinvesting the income into the Title IV program in order to meet additional needs of the Indian students. Lastly, a combination of the two whereby the children would receive a certain share of the income could be arranged.*

Q. To whom should program or budget revisions be submitted?

A. *All correspondence concerning revisions of any kind should be submitted to:*

Program specialist in
your particular area.

The program specialist will make a copy which is for the office file, and then forward the original to the Division of Contracts and Grants, where the official file is kept. Contracts and Grants will review the revision and notify the grantee of approval.

Q. What is the Federal grant number in Item 2 for Advance or Reimbursement form?

A. *Each year, as applications are received by the Application Control Center, a six member figure is assigned to each application. This figure consists of four digits (0765 for example) and is followed by the letters "AL."*

In submitting any correspondence to the Office of Indian Education, this number should be used to identify the grant. This number changes from year to year, and the grantee should use the number only for the project of the fiscal year for which it was assigned.

VI. USES OF FUNDS

Q. Can Part A funds be used for construction purposes?

A. *No; however, it does permit minor remodeling. According to Regulation 186.2, "'minor remodeling' means minor alterations, in a previously completed building, which are needed to make effective use of equipment or personnel in space used or to be used for programs or projects meeting the assessed needs of Indian children. The term may include the extension of utility lines, such as for water and electricity, for points beyond the confines of... such previously completed building, to the extent needed to make effective use of the equipment. The term does not include structural alterations to buildings, building construction, maintenance, or repair."*

Q. Can Part A funds be used to purchase equipment?

A. *Yes. Equipment includes machines, utilities, built-in equipment with necessary enclosures or structures to house them - also, all other items necessary for functioning of a particular facility to be used to provide educational equipment, furniture, printed, published and audio-visual materials, books, periodicals, documents, and other related material.*

VII. NON-LEA UNIT

Q. What is meant by the term "discretionary grant"?

A. *Two points should be made in explaining what a discretionary grant is. In the first place, a discretionary* *grant is awarded on a competitive basis. The applicant is not entitled to a specific amount of money. The size of the grant award must be negotiated by the Contracts and Grants Division. Secondly, an applicant submitting a proposal to continue a previously funded program must bear in mind that his application will be treated as a new effort and will be evaluated on its own terms.*

Q. How are the 10% set aside funds for Non-LEA's distributed?

A. *Funds for the Non-LEA program are distributed on the basis of the evaluative criteria specified in 45CFR, Part 186 and the number of eligible applicants.*

VIII. ELIGIBILITY REQUIREMENTS AND APPLICATION PROCEDURES

Q. What factors are taken into consideration in determining whether or not an applicant is an eligible nonlocal educational agency?

A. *Regulation 186.32 (a) specifically legislates that the following be used as criteria in determining an educational agency's status:*

1. *Whether the governing body of the school or school system was selected by, is representative of, and is solely responsible to the Indian tribe or community which that school or school system serves;*
2. *Whether the governing body derives authority from such community to carry out such functions as:*
   - a. *Employing, managing and terminating personnel;*
   - b. *Developing and revising curricula;*
   - c. *Establishing attendance, academic, and other relevant standards;*
   - d. *Establishing operational policies;*
   - e. *Raising funds.*

In addition to this, Regulation 186.2 defines a nonlocal educational agency as the "governing body of a nonprofit institution or organization of an Indian tribe (emphasis *added) which operates for Indian children an elementary or secondary school or school system, located on or near a reservation...." Consequently, the governing bodies composed of members other than Indians or schools with all Indian governing bodies without ultimate authority are therefore ineligible for assistance under Part A of Title IV.*

Q. What types of expertise are used in the approval of Non-LEA applications?

A. *Initially, the application is received by the Application Control Center where it is recorded and assigned an application number. This number is used for identification purposes while the application is being reviewed.*

The application is then sent to the Non-LEA unit where an initial screening is conducted. After it is determined that the application satisfies all eligibility requirements and is sufficiently complete to warrant consideration for funding, it is submitted to the technical review unit. If an application is ruled ineligible at this stage, a letter to this effect is sent to the applicant at this time. (A rejection may be appealed to the Non-LEA Division Director solely on the basis of the reasons for rejection in the rejection letter.)

Those applications forwarded for technical review must be examined by at least two non-Government Indian readers and one reader from within the Office of Education. The review process is conducted solely in accordance with regulations, evaluation criteria, and program priorities published in the Federal Register*. Additionally, any real or apparent conflict of interest between the reviewer and the applicant must be avoided. If one is found to exist, all relevant information must be submitted to a higher level of authority for a decision concerning further processing of the applications. Approved applications, with the reviewers' comments attached, are then forwarded to the National Advisory Council on Indian Education for their comments and suggestions. Once this is completed, approved applications are submitted to the Contracts and Grants Division for the negotiation of a grant award with the individual project director. Prior to this, no discussions, meetings, negotiations, or contacts should be made between Office of Education personnel and the applicant's personnel except to obtain clarification of specific items contained in the application. After Contracts and Grants receive the approved application, all discussion shall be held jointly among Contracts and Grants, the Non-LEA unit, and the applicant until a grant is awarded. The Contracts and Grants Division is also responsible for notifying Congress and the applicants concerning grant awards.*

Q. What are the roles of the OE Project Officer and the Contracts and Grants negotiator?

A. *The OE Project Officer performs a technical function. On the basis of the eligibility requirements and other regulations outlined in the Indian Education Act, this official determines whether or not an application should be approved. In making this decision, he is assisted by a staff of technical reviewers.*

The Contracts and Grants negotiator is responsible for the negotiation of a grant award for all approved projects. After this is completed, he handles all necessary financial affairs, including program and budget revisions, progress reports and requests for payment.

IX. PROGRESS REPORTS, PROGRAM AND BUDGET REVISIONS

Q. Can amendments be made to existing approved projects relating to change in activity, budget, etc.?

A. *Amendments can be made along these lines, and a justification should accompany each revision.*

Q. To whom should any program or budget revision be submitted?

A. *Each grant award is negotiated by a specific representative of the Contracts and Grants Division. The name of this negotiator and his telephone number are located in the upper left hand corner of the Notification of Grant Award. All correspondence concerning revisions of any kind should be submitted to this person for approval.*

Q. What identification should be used in submitting progress reports, program or budget revisions, or any other pertinent information?

A. *Item #2 of the Notification of Grant Award assigns each approved project a grant number. This grant number is to be used in all correspondence concerning the program.*

Q. What types of forms are necessary to report project progress, and when and to whom are these reports to be sent?

A. *There is no special form for progress reports at this time.*

A simple narrative letter containing such items as:

1. *Heading: Program Progress Report;*

2. *Brief outline giving the stage of project implementation; project revisions, if any; LEA and advisory committee relations; program and/or technical problems encountered; and recommendations for improving the implementation of Part A.*

Progress reports should be submitted at the end of each quarter (September, December, March, and June) and should be addressed to:

(Project Officer in your particular area)
US Office of Education
Office of Indian Education
ROB 3, Room 3662
400 Maryland Avenue, SW
Washington, DC 20202

Q. What forms are necessary to request funds after projects are approved?

A. *Funds are requested by completing HEW-604T, Request for Advance or Reimbursement. This form should be submitted each quarter as funds are needed.*

Q. Can amendments be made to existing approved projects relating to a change in activity, budget, etc.?

A. *Amendments can be made to existing approved projects relating to a change in activity, budget, etc. Requests for amendments should be approved by the parent committee and signed by the committee chairman before being submitted to the Office of Indian Education for approval. A justification should accompany each amendment.*

TITLE IV, PUBLIC LAW 92-318

PART B

I. GENERAL INFORMATION

Q. What does the term "Part B" of Title IV, PL 92-318 mean?

A. *The term refers to the section of the Indian Education Act which will provide direct funding to Indian tribes and organizations for special programs and projects to improve educational opportunities for Indian children.*

Q. Is Part B money for Indian tribes and organizations only?

A. *No. Other organizations, like school boards, State education departments, universities and public agencies are also eligible. However, the Office of Education has established the policy of giving Indian tribes and organizations top priority for Part B funds.*

Q. What amount of money is available under Part B?

A. *This is determined annually by congressional appropriations. Nationally, for fiscal year 1973 (July 1, 1973 to June 30, 1974) $5 million was earmarked for Part B. Fiscal year 1974 appropriations for Part B was increased to $12 million.*

Q. What about future years?

A. *The Indian Education Act originally authorized $35 million for Part B programs for fiscal 1973. Also, the Act authorized $25 million for fiscal 1974 and $25 million for fiscal 1975 under Part B.*

Q. Are Part B funds pro-rated nationally on an Indian student per capita basis?

A. *No. Part B monies are discretionary and are available on a competitive basis.*

Q. Can Part B funds be applied for by any Indian organization, on or off the reservation?

A. *Yes.*

Q. Must the Indian students who will be the beneficiaries of Part B funded programs come from low-income families?

A. *No. There are no income guidelines presently in effect which limit Indian student involvement in Part B projects because of family income levels.*

Q. Does that mean there will be $25 million available under Part B next year?

A. *No. The Act only authorizes that amount. The US Congress will establish the actual dollar amounts during its annual budget-making process for each fiscal year.*

Q. Without definite assurance of continued funding, should Part B applicants write only one-year proposals?

A. *No. Part B proposals can be long range in scope to effectively resolve the problems being addressed, yet, there should be definite parameters incorporated into the proposal on a yearly basis to indicate that definite goals can be achieved annually.*

Q. If an applicant agency has a Part B proposal approved for a previous fiscal year, will there be a contigent guarantee of refunding for future years?

A. *No. There are presently no stipulations in the Office of Education's policies and regulations which assure that Part B funded programs will be automatically refunded, even if the programs prove to be successful. Multiple year proposals can be considered and approved by the Commissioner. However, even with approved multiple year projects, refunding on a continued basis would be subject to annual appropriations and acceptable continuing proposals.*

Q. When can an organization apply now for Part B program funds?

A. *Each year a deadline is set for proposal submittal. Proposal deadline for fiscal year 1975 projects was January 27, 1975. This is usually announced in the Federal Register.*

Q. What about the coming year?

A. *Although the Office of Education hasn't yet issued guidelines and dates for 1976 Part B proposals, it won't do any harm to begin preparation of a proposal and to keep watching for notices on submission dates.*

Q. How can an organization acquire copies of guidelines, regulations, and application forms for Part B funds?

A. *Write*

Division Director
Division of Special Projects
US Office of Education
Office of Indian Education
ROB 3, Room 3514
7th and D Streets, SW
Washington, DC 20202

or

INDIAN EDUCATION TRAINING, INC.
5510 Domingo Road, NE
Albuquerque, New Mexico 87108

Telephone: (505) 265-7957

Q. Can Indian organizations utilize Part B funds to train teachers or teacher aides?

A. *Yes. Public Law 93-380, Title VI, Part C amended Part B, Title IV, Indian Education Act. Sec. 422 authorized grants to and contracts with institutions of higher education, Indian organizations, and Indian tribes for preparing individuals for teaching or administering special programs and projects designed to meet the special educational needs of Indian children and to provide in-service training for persons teaching in such programs. Priority is to be given to Indian institutions and organizations.*

Under this program "fellowships" and "traineeships" may be awarded to individuals, and grants and contracts may be awarded to institutions of higher education, Indian organizations and Indian tribes for the cost of education allowances. In the awarding of "fellowships" and "traineeships" preference is to be given to Indians. These "fellowships" and "traineeships" may include stipends to and allowances for dependents of persons receiving "fellowships" and "traineeships".

$2,000,000 is authorized for annual appropriations for each fiscal year up to fiscal year 1978.

Additionally, Public Law 93-380, Part C further amends Public Law 92-318, Indian Education Act, by adding Sec. 423 which authorizes 200 annual "fellowships" for Indian students for graduate and professional study at institutions of higher education.

II. PARENT AND COMMUNITY INVOLVEMENT

Q. How are Indian parents to be involved in Part B programs and projects?

A. *The regulations contained in 45 CFR Part 187 state:*

Applicants must describe the manner in which parents of the Indian children to be served and tribal communities:

1. *Were consulted and involved in the planning and development of the project;*
2. *Will be actively participating in the further planning, development, operation and evaluation of the project;*

Furthermore, applicants for Part B funds must identify by name the membership of the required Indian parent committee which must consist of at least 50 percent actual Indian parents of the children to be served.

III. ELIGIBILITY CRITERIA

Q. Who is legally eligible to apply for Part B funds?

A. *Indian tribes, organizations and institutions (which hold nonprofit charters); also, State educational agencies, local educational agencies, federally supported elementary and secondary schools for Indian children, institutions of higher education and public agencies and institutions.*

Q. What is the criteria to determine what is an Indian tribe, organization or institution?

A. *Definition of Indian for this Act includes any individual who:*

1. *Is a member of a tribe, band, or other organized group of Indians, including those tribes, bands or groups terminated since 1940 and those recognized now or in the future by the State in which they reside, or who is a descendent in the first or second degree of any such member;*
2. *Is considered by the Secretary of Interior to be an Indian for any purpose;*

3. *Is Eskimo, Aleut or other Alaskan Native, or*

4. *Is determined to be an Indian under regulations promulgated by the Commissioner, after consultation with the National Advisory Council on Indian Education.*

Q. Who has the primary responsibility for making grants under Part B of Title IV, PL 92-318?

A. *The Deputy Commissioner of Indian Education, who relies upon the advice and counsel of the National Advisory Council on Indian Education (which is a Presidentially appointed body created by Part D of Title IV, PL 92-318).*

Q. Is this Board representative of all Indian people?

A. *This question is difficult to answer as many informed people have varied opinions regarding the composition of this Board, certain actions of the Board, and the history of how the Board was selected.*

The Board consists of 15 members who are all enrolled members of various Indian tribes. Each individual has a major commitment to Indian education. The problem is that in some respects, the Board may not be truly representative of all areas and locales of Indian country.

Q. Does this Board give direction to the Deputy Commissioner of Indian education?

A. *Only in an advisory capacity. The Board has no statutory power to oversee and direct the actions of the Deputy Commissioner. That is why the answer to who has primary responsibility to determine the eligibility of organizations for Part B funds is the Deputy Commissioner.*

Q. Are the regional offices of HEW involved in any manner in determining eligibility, reviewing applications and approving proposals?

A. *Not at the present. All of this takes place in the Washington, DC offices of OE, and involves OE staff at that level and the National Advisory Council on Indian Education.*

Q. Are private and/or parochial schools for Indians eligible for Part B funds?

A. *Yes. If their governing body is an Indian group; however, there are Federal regulations which require specific definition of what the Federal funds are to be used for to insure the fact that such funds will* ***not*** *be utilized to carry out any of the religious functions of the institution.*

Q. Are there other governing policies concerning eligibility for Part B funds?

A. *All current regulations are contained in 45CFR, Part 187 which can be obtained by writing to the Deputy Commissioner of Indian Education (addresses previously given in this handbook).*

IV. APPLICATION PROCEDURES

Q. What kinds of programs can be funded under Part B guidelines?

A. *There are five types of grants possible under Part B guidelines, and they are outlined as follows:*

1. *Planning, pilot and demonstration projects designed to test and demonstrate the effectiveness of programs for improving educational opportunities for Indian children;*
2. *Programs designed to stimulate:*
    - a. *The provision of educational services not available to Indian children in sufficient quantity or quality;*
    - b. *The development and establishment of exemplary educational programs to serve as models for regular school programs in which Indians are educated.*
3. *Pre-service and in-service training programs for persons serving Indian children as educational personnel (with preference given herein to the training of Indians);*
4. *Programs for the dissemination of information and materials relating to, and the evaluation of the effectiveness of education programs which may offer educational opportunities to Indian children;*
5. *"Fellowships" and "trainees".*

Q. Can an Indian organization sub-contract Part B funds to achieve their proposed objectives?

A. *Yes; for instance, an Indian organization not having the resources on hand to print their own cultural literature could sub-contract with a printing firm. Or, perhaps, a sub-contract could be given to a technical assistance organization for some specific part of the program activities.*

Q. Can Part B funds be used for construction purposes?

A. *No.*

Q. Can Part B funds be used to purchase equipment?

A. *Yes. Equipment includes machinery, utilities, built-in equipment with necessary enclosures or structures to house them. All other items necessary for functioning of a particular facility to be used to provide educational services for Indian children including instructional equipment, furniture, printed, published and audio-visual material, books, periodicals, documents and other related material.*

Q. Can Part B funds be used for projects for "handicapped" children?

A. *Yes. Handicapped children means mentally retarded, hard of hearing, deaf, speech impaired, visually handicapped, seriously emotionally disturbed, crippled or other health impaired children, who by reason thereof require special educational and related services.*

Q. What information is required in the application for Part B funds?

A. *There are several basic requirements which are as follows:*

1. *The problem to be addressed;*
2. *The overall objectives of the proposed program or project;*
3. *The manner in which the proposed program or project will be carried out to achieve the proposed objectives;*
4. *The type and size of the proposed staff (including the staff training proposed);*
5. *The amount of grant being requested;*

6. *The number of Indian children involved and number of children to be affected by the successful outcome of the program or project;*

7. *The degree to which the program or project addresses the particular educational needs of the Indian children involved;*

8. *The relative isolation (geographic and/or social) of the Indian community to be served by the program or project;*

9. *The degree to which the Part B funded program will be coordinated with other similar activities in existence that are designed to serve the educational needs of Indian children;*

10. *A description of administrative methods to ascertain that the program or project administration is carried out in a proper and efficient manner;*

11. *A description of how Indian parents and Indian communities will be involved in all phases of the project;*

Q. Are there other criteria which the Office of Education will use to determine the feasibility of proposed projects for Part B funds?

A. *Yes; they are as follows:*

1. *The adequacy of the qualifications and experience of the personnel designated to carry out the proposed project;*

2. *The adequacy of facilities and other resources;*

3. *The reasonableness of cost to the anticipated results;*

4. *The expected potential for utilizing project results in other areas for similar purposes;*

5. *The sufficiency of the size, scope, quality and duration of the program to secure productive results;*

6. *The soundness of the proposed plan of operation (this includes the extent to which the objectives of the proposed project are sharply defined, clearly stated, capable of being attained by the proposed procedures and capable of being measured and evaluated); also, the provision for adequate evaluation for determining the extent to which the objectives are achieved. Where appropriate, provision is made for in-service training for project activities and objectives whereby provision is made for dissemination to the general public and those concerned with Indian education of project results.*

Q. Are there any other criteria to be used by OE in proposal evaluations?

A. *Yes. There are other criteria governing each of the five specific areas defined previously as the five areas for which Part B funds will be implemented. These are contained in 45CFR, Part 187 which it has been previously stated you can secure from the Deputy Commissioner of Indian Education.*

Q. What other terms are required to be met when applying for Part B funds?

A. *The standard Federal requirements of retention of all fiscal records, availability for audit and examination, civil rights compliance, etc.*

TITLE IV, PUBLIC LAW 92-318

PART C

I. GENERAL INFORMATION

Q. What is Part C of Title IV, Public Law 92-318?

A. *Part C is the third section of the Indian Education Act. Part C deals with creating programs in the field of adult Indian education.*

Q. Does Part C, Title IV, have another name?

A. *Yes, it is also called Special Programs Relating to Adult Education for Indians.*

Q. How much money was authorized for Part C?

A. *Public Law 92-318 authorized $5 million for Part C in fiscal year 1973, and $8 million for each of the two succeeding fiscal years.*

Q. How much money will be available for 1974 to fund Part C programs?

A. *Public Law 92-318 authorized $8 million for 1974 and $8 million for 1975. However, the amount of money actually made available will be determined by Congress for each year.*

Q. Who may apply for Part C funds?

A. *Any Indian tribe, Indian institution or Indian organization may apply for funds under Part C.*

II. COMMUNITY INVOLVEMENT

Q. When a tribe, organization, college, or school applies for funds under Part C, must there be Indian community involvement?

A. *Yes. The law states:*

> *"The Commissioner shall not approve an application for a grant... unless he is satisfied that such application, and any documents submitted with respect thereto, indicate that there has been adequate participation by the individuals to be served and tribal communities in the planning and development of the project, and that there will be such a participation in the operation and evaluation of the project."*

III . ELIGIBILITY CRITERIA

Q. Who is eligible to participate in these programs?

A. *Definition of Indian for this Act includes any individual who:*

1. *Is a member of a tribe, band or other organized group of Indians, including those tribes, bands or groups terminated since 1940 and those recognized now in the future by the State in which they reside, or who is a descendant in the first or second degree of any such member;*
2. *Is considered by the Secretary of Interior to be an Indian for any purpose;*
3. *Is Eskimo, Aleut or other Alaskan Native, or;*
4. *Is determined to be an Indian under regulations promulgated by the Commissioner, after consultation with the National Advisory Council on Indian Education.*

Q. Who is considered an Indian adult for these programs?

A. *Public Law 92-318 states anyone who is 16 years old or older is considered an adult for these specific programs.*

Q. Is Part C only for reservation Indians?

A. *No. Any Indian living on or off a reservation is eligible to participate.*

Q. Are there any income guidelines to be eligible to participate in these programs?

A. *No. Unlike other government programs, any adult Indian may participate in the adult education programs.*

IV. APPLICATION PROCEDURES

Q. Where do you write to request application forms and guidelines?

A. *Deputy Commissioner*
Office of Indian Education
FOB 6, Room 4047
400 Maryland Avenue, SW
Washington, DC 20202

Q. Where do we send the completed application?

A. *Same address as above.*

Q. When do the forms have to be completed and submitted to the Office of Education?

A. *This may vary from year to year and should be determined for each year you plan to submit a proposal. Deadlines are published annually in the Federal Register.*

Q. Can local groups receive any assistance in filling out their applications?

A. *Yes. The HEW office in your region has a list of organizations who will give technical assistance in proposal writing. You can request the address of your particular HEW Regional Office when you request the application form from Washington.*

Q. What kinds of programs can the money be used to create?

A. *There are seven areas Title IV, Part C money can be used for:*

1. *To support plannings, pilot and demonstration projects to show the effectiveness of future programs in improving employment and educational opportunities for Indian adults;*
2. *To support programs enabling adults to learn basic reading and writing skills and to qualify for a high school equivalency certificate in the shortest possible time;*

3. *To support research and development programs to develop new and innovative techniques to achieve literacy and high school equivalency goals;*

4. *To provide basic surveys and evaluations to define extent of illiteracy and lack of high school completion on Indian reservations;*

5. *To publish and disseminate materials to inform Indian adults of programs offering educational opportunities, to evaluate how effective these educational programs are.*

Organizations other than local educational agencies such as public institutions, public agencies and tribes may also apply for grants to:

6. *Disseminate information concerning educational programs, services and resources available to Indian adults;*

7. *Evaluate the effectiveness of federally assisted programs in which Indian adults may participate in achieving the purpose of such programs.*

Q. What should be stated in the proposal when a group makes application for funds under Part C?

A. *The application should fully describe the program and activities the money will be used for. The application should also provide some form of evaluation to measure how effectively you are meeting your goals.*

Q. Are there other broad types of criteria that will be used in awarding grants?

A. *Yes. The Commissioner must take into account the following general criteria:*

1. *The degree which the project will involve innovate methods, systems materials on programs of special value in improving employment and educational opportunities for adult Indians;*

2. *The extent to which these activities will be coordinated with other programs to improve educational or employment opportunities for adult Indians;*

3. *The adequacy of the qualifications and experience of the personnel hired to run the project;*

4. *The adequacy of the facilities and resources of the groups requesting the grant;*

5. *The reasonableness of the estimated cost of the project in relation to the anticipated results;*

6. *The soundness of the proposed plan of operation, including consideration of the extent to which:*

   a. *The objectives of the proposed project are sharply defined, clearly stated, capable of being attained by the proposed procedures and capable of being measured and evaluated;*

   b. *Provision is made for adequate evaluation of the effectiveness of the project and for determining the extent to which the objectives are accomplished;*

   c. *There appropriate provision is made for satisfactory in-service training connected with project services;*

   d. *Provision is made for disseminating the results of the project and for making materials and techniques resulting from the project available to the general public and specifically to all those concerned with education of Indian adults.*

Q. Are there additional criteria that is considered by the Commissioner of Education when the project deals only with surveys?

A. *Yes. Application for surveys of problems of illiteracy or lack of high school completion on reservations will be considered in light of:*

1. *How adequate are the measurements and data collection systems to be used in the survey;*

2. *How adequate are the methods to be used to process, analyze and evaluate the collected data, making the results available to the public;*

3. *How adequate is the plan for administering the program including:*

   a. *The personnel to be used;*

   b. *How comprehensive is the survey sample;*

   c. *The number of adult Indians to be survey;*

   d. *How practical is the time schedule as related to the procedures used to collect the data;*

   e. *The provisions of the project director to verify the accuracy of the collected data.*

Q. Are there limits on the cost of the project?

A. *Yes. When the grant is awarded, the amount of money will always be specified. If the project spends more money than was originally allotted, the government is not responsible to pay the extra cost.*

The project staff may request an increase in their allotment, but can't legally spend more money than they originally received until the Commissioner of Education has notified them in writing it is okay.

V. FINANCIAL ACCOUNTABILITY (Recordkeeping)

Q. What records must be kept during the project?

A. *All records dealing with how much money was received or spent and how much money was contributed by the project itself, and all records of direct or indirect costs.*

Q. How long must the records be kept?

A. *Three years after the final financial report has been submitted to the Commissioner.*

Q. Are there exceptions to having to keep the records longer than three years?

A. *Yes. Records for non-expendable personal property, typewriters, desks, etc., have to be kept for three years after the property has been disposed of. Also, in case there are audit questions, the records must be retained until the audit question is resolved.*

Q. Can microfilm copies of the books be substituted for keeping the required length of time?

A. *Yes.*

Q. Are the financial records always open to inspection?

A. *Yes, the records shall always be open to inspection by the Secretary of Education and the Comptroller General of the United States, or any of their duly authorized representatives.*

Q. Must there always be an audit of the program's financial activities?

A. *Yes. Anyone who receives a grant will audit their books or have an audit performed.*

Q. How often must an audit be performed?

A. *Usually, annually, but not less than once every two years if there are extraordinary circumstances to be considered such as the location, nature, etc., of the project.*

HISTORY OF JOHNSON O'MALLEY

The Johnson O'Malley Act was passed in 1934 to provide agricultural, educational, health, and welfare services to Indian people. Because of limited funds, the programs have historically been limited to the education area.

It was amended in 1936 to allow non-profit organizations, including Indian tribal groups, to contract directly with the United States Government to provide these services.

These funds were given directly to the State Department of Education. It, in turn, passed them on to public school districts to make up for whatever revenue the districts (theoretically) lost by having tax-exempt Indian land within its boundaries.

In 1958, Public Law 874, which provided money to school districts which contained large areas of non-taxable land, was extended to cover districts with Indian lands.

At this point, the Bureau of Indian Affairs changed the Johnson O'Malley regulations and Johnson O'Malley became a program to provide special programs to meet the unique educational needs of Indian children. The way Johnson O'Malley funds are used within any State is spelled out in a "Plan of Operation" for Johnson O'Malley. This becomes part of the agreement between the United States Government and whoever is administering the Johnson O'Malley contract.

As early as 1968, Indian leaders were concerned that Johnson O'Malley funds were not reaching the Indian students. It seemed that the State

page 48 blank.

was allowing the local school districts to mix Johnson O'Malley funds in with their ordinary operating budget. The State, Bureau of Indian Affairs, and local districts all said that this allowed the districts to provide a "better" program for all students and since this included Indian students, that Johnson O'Malley funds were being properly spent. Indian people disagreed with this view, saying that the State plan called for use of Johnson O'Malley for supplemental programs, over and above the ordinary operational program provided for all students in a school district. Also, they said Johnson O'Malley is coming into the local districts because of the Indian students attending, and therefore Indian students should be receiving the benefits of Johnson O'Malley programs.

Several lawsuits were filed in the State of New Mexico (in the Bernalillo, Gallup, and Central Consolidated School Districts) by Indian people challenging the way Johnson O'Malley funds were being spent. As a result, the State of New Mexico has made noticeable improvements in the accounting procedures required for Johnson O'Malley funds.

Further changes in the use of Johnson O'Malley funds are imminent due to the passage of Senate Bill 1017, now known as Public Law 93-638. We will initiate the analysis of the regulations for Title II - THE INDIAN EDUCATION ASSISTANCE ACT of Public Law 93-638 as soon as they are written.

JOHNSON O'MALLEY ACT OF APRIL 16, 1934 (48 STAT. 596)
AS AMENDED BY
THE ACT OF JUNE 4, 1936 (49 STAT. 1458)

To amend an Act entitled "An Act authorizing the Secretary of the Interior to arrange with States or Territories for the education, medical attention, relief of distress, and social welfare of Indians, and for other purposes."

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Act of April 16, 1934 (48 Stat. 596), entitled "An Act authorizing the Secretary of the Interior to arrange with States or Territories for the education, medical attention, relief of distress, and social welfare of Indians, and for other purposes," be, and the same hereby is amended to read as follows:

P.L. 74-638, June 4, 1936 Approved June 4, 1936

"That the Secretary of the Interior be, and hereby is authorized, in his discretion, to enter into a contract or contracts with any State or Territory, or political subdivision thereof, or with any State university, college, or school, or with any appropriate State or private corporation, agency, or institution, for the education, medical attention, agricultural assistance, and social welfare, including relief of distress, of Indians in such State or Territory, through the agencies of the State or Territory or of the corporations and organizations hereinbefore named, and for the education, medical attention, agricultural assistance, and social welfare, including relief of distress of Indians in such State or Territory.

"Sec. 2. That the Secretary of the Interior, in making any contract herein authorized, may permit such contracting party to utilize, for the purposes of this Act, existing school buildings, hospitals, and other facilities, and all equipment therein or appertaining thereto, including livestock and other personal property owned by the Government, under such terms and conditions as may be agreed upon for their use and maintenance.

"Sec. 3. That the Secretary of the Interior is hereby authorized to perform any and all acts and to make such rules and regulations, including minimum standards of service, as may be necessary and proper for the purpose of carrying the provisions of this Act into effect: Provided, that such minimum standards of service are not less than the highest maintained by the States or Territories within which said contract or contracts as herein provided, are to be effective.

"Sec. 4. That the Secretary of the Interior shall report annually to the Congress any contract or contracts made under the provisions of this Act, and the moneys expended thereunder." (Repealed by P.L. No. 533--86th Congress).

LEGISLATIVE HISTORY OF THE JOHNSON O'MALLEY ACT

The following legislative history and analysis was prepared from Senate and House reports and hearings on both Johnson O'Malley and P.L. 874, from letters, memoranda and press releases found in the Bureau of Indian Affairs files at the Archives. Some of the other materials used were files of individual people.

The Tax Status of Indian Property May Not Control The Administration of Johnson O'Malley Programs

Throughout the legislative record of the Johnson O'Malley Act, the Bureau of Indian Affairs appears to be pursuing two different and, to some degree, mutually exclusive policies. One such policy views JOM funds as "in lieu of taxes" payments, available for school districts having financial difficulties absorbing Indian children into their public school systems because of the presence in their districts of large blocks of nontaxable Indian land. Prior to the passage of JOM, the BIA paid local school districts, on a per capita basis, for the tuition of Indian children attending the public schools. JOM, then, did not direct a new policy or authorize a new practice for the BIA. Rather, it merely permitted the BIA to contract with States, where appropriate, instead of with each school district. (It also extended this long-standing practice in education to apply to health and welfare services.)

The other, and rather contrary, policy is based on a recognition that the Federal Government's earlier policy of allotting Indian lands (and thereby forcing the Indians to scatter) had disastrous effects on those Indians who were put off the land, because although they were still technically wards of the Federal Government, they were rarely provided

BIA services and usually denied State and local services.[1] The policy to be implemented under JOM was to absorb these Indians into the system of local services (they were already absorbed into the white population) by having the Federal Government pay for the cost of the services without having to set up expensive duplicate facilities and programs.

The Senate committee report on the Act contains the following language:

> This bill is intended particularly to make it possible that the Department of the Interior should arrange for the handling of certain Indian problems with those States in which the Indian tribal life is largely broken up and in which the Indians are to a considerable extent mixed with the general population. . . .
>
> . . . . . . (I)t becomes advisable to fit them into the general public school scheme rather than to provide separate schools for them. The Indian Service has already established the precedent of arranging with many local communities to take Indian children into the public schools, but it has lacked authority to transfer such functions on the broader basis to the States.[2]

The language of paragraph one and the last sentence of paragraph two do not, it seems, refer to the same policy: the precedent referred to in paragraph two is that of paying tuition costs related to the presence of untaxed Indian lands. If paragraph one is, in fact, a statement of the bill's primary purpose, then paragraph two must refer only to the fact that the machinery for payments to States already existed.

Either of these policies can be supported under the broader theory underlying the legislation - that the States should assume responsibility for serving their Indian populations and that Indians will be better prepared for the duties and responsibilities of citizenship (i.e. better "civilized") if they are as completely absorbed into the white culture as possible.

Strong arguments can be made and documented for both of the possible interpretations of Congressional intent in passing JOM. The official record - Senate and House reports, including letters from both the Secretary of Interior and Commissioner of Indian Affairs, John Collier, - as well as correspondence and press releases from John Collier when he lobbied for passage of the bill as Executive Director of the American Indian Defense Association, Inc., support the position that the bill was intended particularly to get services to scattered, off-reservation Indians. Interior Secretary Harold Ickes expressed this view:

> There are many sections of the United States where people of Indian blood are so definitely a part of the general population that it is neither necessary nor wise for the Federal Government to deal with them on any segregated plan. Moreover, in much of the rural area where Indians are living, educational, health, and other facilities are so limited that it is highly desirable for the Federal Government and the State to combine resources wherever possible. In the field of education, this method has resulted in arrangements whereby large numbers of Indian children are attending school successfully with whites. In agricultural and home extension work, particularly in Montana and South Dakota, the State and the Federal forces have been able to combine on some reservations under conditions that would represent financial savings and more effective work if extended to other reservations in these and other States.
>
> . . . It is not intended, of course, to turn Indians over to the States in large numbers and it is not contemplated that this cooperation will develop to any extent where solid groups of Indians reside, such as in the Southwest, unless Indians themselves seek this type of cooperation. The Indian Bureau finds it extremely difficult to render service to some Indians living in widely scattered communities, and cooperative endeavor with State authorities would help both Indians and whites living in these more isolated areas.[3]

Commissioner of Indian Affairs John Collier's opinion of the purpose of the bill mirrors Secretary Ickes'.

In 1930, Collier, as Executive Director of AIDA, wrote of the Swing-Johnson bill (predecessor of JOM):

> The great positive necessity for the bill grows out of the fact the Federal Government does not now, and never can, provide adequate service in education, health and relief to the scattered Indians of the Pacific Coast, in the Dakotas. . .
>
> These Indians are scattered among the white populations, not only on Federal-trust-held Indian land, but off of such land.[4]

and

> The Swing-Johnson bill . . . and the policy which drafted it have little and probably no connection with Pueblo, Navajo or other South-West tribal Indians. It is designed to re-establish Federal aid for the great number of Indians scattered among the white population of the Pacific Coast, and Northern States, who, while technically wards of the Federal Government, are practically out of reach of the government, while the local agencies are without responsibility or authority to look after them. . . They are the Indians most tragically situated, most deeply wronged of all our Indian wards. To deny them Federal aid . . . through cooperative arrangements with the State and county agencies . . . is inexcusable, because these Indians can be helped without hurting the tribal Indians, who are not at present concerned with the administration policy at all or affected by it even inferentially or indirectly.[5] (Emphasis added)

The force of this interpretation is strengthened by the fact that John Collier was Commissioner of Indian Affairs at the time JOM was passed, and thus was the first Federal official to implement it.

In the eight years prior to the passage of JOM, a number of similar bills were considered by the Congress. The impetus for such legislation was most probably the law of 1924 granting Federal citizenship (and thus State citizenship) to Federally-recognized Indians. The Bureau began then moving in a direction subsequently expressed in a memo to the Secretary of Interior from Indian Commissioner Rhoads in 1930:

> (T)he time has arrived when States directly interested in the civilization and advancement of Indians should begin to assume a greater degree of responsibility in connection with Indian affairs and especially in matters relating to education, medical care, and relief of indigents.[6]

The first State to express interest in assuming these responsibilities was California, where the Indians had practically no tribal lands because they had abandoned them under provisions of treaties made with the Federal Government but never ratified. In 1926, Senator Hiram Johnson of California introduced a bill "Providing that funds appropriated for the care and relief of Indians of California under the direction of the Secretary of the Interior shall be expended through certain public agencies of the State of California."[7] In 1927, similar bills were introduced for Montana and North Dakota, as well as one applying to "the Several States,"[8] but the Johnson version, limited to California, is the one most widely discussed in Bureau memos and correspondence with members of Congress through 1930. (One reason for this may have been that California has passed enabling legislation authorizing its Governor to contract with the Federal Government for funds for Indian services, whereas other States had not.)

Several unidentified, undated statements (found in the BIA Education files at the Archives, and from their placement in the files, probably written in 1930) reinforce the emphasis on non-reservation Indians found in the 1930 Collier statements:

> Early enactment is desirable, particularly in view of the assistance that can be rendered to groups of Indians not now participating in either Federal or State activities. (Emphasis added)

and

> It . . . would involve expensive duplication for the Indian

> Service to try to provide those services especially for the great number of scattered Indians who no longer live on reservations but have made their homes in cities. (Emphasis added)

A 1929 Office of Indian Affairs press release provides a clue as to what the legislation did not cover:

> Those Indian children who live in isolated all-Indian communities will still go to Indian day schools and boarding schools . . .[9]

This statement suggests a plausible link with the "in lieu of taxes" theory - reservation children living within a reasonable distance from a public school as well as Indian children intermixed with white populations were to be served by the bill; only those to whom public schools were completely inaccessible, geographically, would (ultimately) continue at Federally-operated schools.

As indicated by the above, the strongest evidence for the theory that JOM was intended particularly to serve scattered Indians largely intermixed with the white populations appears in the early history of the bill (i.e. from 1926 to 1930) and at the time of its passage. The only evidence after passage that this intention was implemented is that California was the first State to have a JOM contract.[10]

The "in lieu of taxes" theory is not as precisely articulated vis a vis JOM, but a study of the BIA memos, letters and testimony at Congressional hearings suggests that the policy underlying JOM was closely linked to the earlier Bureau practice of paying tuition for Indian children in local public school districts, and that those payments were based primarily on the presence of untaxed Indian lands. A 1931 letter from the Assistant Commissioner of Indian Affairs says that the untaxed land is the "fundamental reason" for the tuition payments.[11] In 1932, the Senate Subcommittee on Indian Affairs published a study on untaxed Indian lands. In the Bureau's files there appear a number of memoranda, using information contained in the Senate study, on how to develop Federal assistance for public schools in such areas. The general tenor, of these documents suggests a movement toward contracting with the States, rather than with local districts. Also in the BIA's files is a "Resolution on Federal State Relations adopted at Spokane Conference of October 17, 1931." (There is no indication of who attended this conference, but the document's contents suggest that it was State education directors.) The resolution calls for a State-wide program of payments for Indian children.

Appropriations hearings in the years directly following the passage of JOM support the argument that JOM was mostly a continuation of the old tuition payment program, only in a slightly different form. Since the first JOM contracts were executed in fiscal year 1935 (with California and Washington), it should be presumed that they went into effect in FY 1936. However, JOM does not appear as a separate budget item until FY 1937. Of these contracts, the BIA said, "The amount to be paid under the terms of the contract in each case was the same as total tuition payments to the public school districts of the State during 1934."[12] (Emphasis added)

During appropriations hearings the previous year, Dr. Carson Ryan, Director of Education for the BIA, had said:

> The chief argument for paying Federal tuition for the Indian children is that the existence of the untaxed Indian land deprives the school district of part of its taxable resources.
>
> . . . If there is no untaxable Indian land, it is a little difficult to justify payment of a Federal subsidy . . .[13]

In the FY 1937 hearings, Assistant Director of Education, Paul Fickinger, spoke more specifically of the Bureau's method of distributing tuition funds. He talked about State equalization laws taking the burden off local property taxes for education, and how these laws affected the BIA's policy:

> When arrangements can be made with the public school district to provide them, the special services (food, clothing, school supplies, etc.) are included in the tuition agreements and furnished by the school district. . . . We are from time to time requiring the States and districts where this can be arranged to assume the greater part of the strictly educational costs thus providing that an increased proportion of tuition paid shall be expended for special services.
>
> There are some States where there is no equalization law and the districts are still largely dependent on local taxation. Here the Indian Service must continue to assist with the actual cost of maintaining the schools as well as providing funds for the special services required for Indian children.[14]

Similarly, the Bureau's discussion of the JOM contracts with California and Washington contained this explanation:

> These contracts provide for education of the Indian children; and where required and to the extent to which funds are available under the contracts, for their transportation to and from school, for noonday lunches, text books, school supplies, school medical and dental service; also, so far as practicable for special courses desirable for Indian children.[15]

It is reasonable to conclude, in trying to mesh the "in lieu of taxes" theory with the "scattered populations" theory, that the Bureau was, at least theoretically, paying so-called maintenance and operation costs for Indian children in districts (1) with large blocks of untaxed Indian land and (2) where they had previously received no local schooling; in other districts, which were already providing basic educational services to Indians, the Bureau paid for special services.

(It is difficult to argue that JOM was ever intended for non-Federally-recognized Indians, although there is no definition of "Indian" in either the Act or the Congressional reports. But since the Act was intended (a) to allow for the transfer of BIA services to the States, or (b) in cases where the Federal Government had not been providing services to its wards, to pay the States to do so, the Act must have been meant to apply to those Indians to whom the Federal Government recognized an obligation at the time of its passage.)[16]

Johnson O'Malley Funds Must Be Used For Supplemental Purposes Only

Very little in the legislative history of JOM speaks to this specific question; conclusions must be inferred from the stated intentions of the Act and from the policy considerations that initiated it.

Several broad goals, some of which have already been discussed, emerge from the available documents. To recapitulate briefly, these goals were:

1. To get services to scattered Indians who previously had been short-changed by both State and Federal government;
2. To promote efficient government by avoiding duplication of services and facilities and, correlatively, to get better services to Indians by minimizing expensive Federal overhead costs and developing local, instead of long-distance, program administration;
3. To get State governments more involved in meeting the needs of their Indian populations, thereby speeding up the assimilation of Indians into the white social structure.

The House report on the 1934 legislation described the bill as making possible the transfer of Indian services to State agencies, with the Federal Government bearing the "added expense." [17] (Emphasis added) Thus, the Interior Department intended to supplement State financial resources to the extent required to meet the costs of educating Indian children.

The earliest JOM payments, under contracts with California and Washington, were made on a per capita basis, following the Bureau's established policy. By 1951, the Bureau was making payments based on need, rather than per capita cost.[18] The need criterion is stronger evidence than the per capita system that the funds were intended to supplement local expenditures. In 1951, Indian Affairs Commissioner Nichols told a Senate Appropriations Subcommittee that the State and district must exert "the maximum legal effort, and then we will make up the difference.[19]

When P.L. 874 (Federal Impact Aid) was amended in 1958 to permit school districts to receive both 874 and JOM funds, the Bureau clearly articulated that at least in 874 districts, JOM funds were indeed supplemental. BIA Chief of Education, Hildegarde Thompson, described, in a 1961 Senate hearing, the conditions under which JOM funds would be paid to 874 districts. One such situation was:

> Where there is no tax resource or practically no tax resource in the district, and the only financial resource the district has is the State aid program, plus what they get from 874, and the two together would not put them at all where they could operate an adequate program.[20]

Throughout the period from the early 20's to the early 60's, the Bureau appears to have been pursuing a policy of encouraging States to pick up the burden of general education of Indian children. Although

Johnson O'Malley actually only directed them to assume the administrative - not the financial - burden, it is nonsensical to suggest that the Federal Government did not intend that the States maintain their existing financial commitment to public education.

Johnson O'Malley Funds Must Be Spent Exclusively For the Benefit of Indian Children

This case is more difficult to make. Under the per capita system, presumably the Bureau expected that tuition funds for Indian children would go into the school district's general education pot. The goals of integrating Indian children into white society, and providing better services by avoiding expensive duplication would logically be furthered by adding the "Federal" money to the general operational budget. But nothing in the official legislative record speaks directly to this point.

There is some suggestion that Bureau officials recognized the necessity of concentrating special efforts on Indian children in the process of doing away with all-Indian Federally-operated schools. Thus, Dr. Carson Ryan said in 1934:

> Merely to eliminate Indian children from boarding schools under present conditions is of little value and may prove to be a positive detriment, unless a constructive program of relief and economic and social rehabilitation can be provided.[21]

But this is not articulated as an integral part of the legislation, nor should the need for special services be taken as an indication that the general tuition money was necessarily intended to be spent for the benefit of Indian children only. The Bureau's description of the first two contracts, quoted earlier, minimizes the importance of the special expenditures exclusively for Indian children, indicating that such things as lunches, school supplies, transportation and health services are provided only "to the extent to which funds are available . . ."[22] Thus, the bulk of JOM money went to general maintenance and operation, and whatever was left over after that went to special services.

Paul Fickinger's statement, also quoted earlier, expresses a similar theme but with more emphasis on spending Federal monies for the "special services required for Indian children" while encouraging the States and local districts to assume the burden of general operational expenses.[23] (Emphasis added)

Although the primary intention of JOM may have been to get Indian children into State public school systems, the related considerations - mentioned earlier as broad goals - cannot be overlooked. The BIA was in the process of closing down many Indian boarding schools and wanted to get out of the business of providing education. It therefore certainly wanted to provide incentive to the States to take over; extra money in the education coffers is a good incentive. In fact, Commissioner Collier said in his letter reprinted in the Senate report:

> In the case of Indians living in widely scattered communities, we find it extremely difficult to render effective service and cooperative endeavors with State authorities would help both Indians and whites living in these more isolated areas.[24]

Whether all education funds under JOM were intended to be spent for the exclusive benefit of Indian children is debatable; what is reasonably certain is that any funds spent for special, or compensatory services, were to meet unique to the Indian population.

FOOTNOTES

1. *Press Release from American Indian Defense Association, Inc. February 6, 1930.*

2. *S. Report 511, 73rd Congress, 2nd Session, 1934.*

3. *Id. Letter from Harold Ickes to Hon. Burton K. Wheeler, Chairman Committee on Indian Affairs, United States Senate.*

4. *Statement of the American Indian Defense Association, Inc. (AIDA) on the Swing-Johnson Bill. February 15, 1930.*

5. *Letter to the Editor of the New York Times from AIDA. April 27, 1930.*

6. *February 27, 1930.*

7. *S. 3020, 69th Congress, 2nd Session, 1926.*

8. *S. 1505, S. 1529, H.R. 7031 (respectively), 70th Congress, 1st Session, 1927.*

9. *August 23, 1929.*

10. *This statement is not exactly accurate. In a letter to Senator Lee Metcalf, dated June 22, 1970, Mary Condon Gereau, former Superintendent of Education for the State of Montana, commented that JOM funds had been granted for urban Indian children in Great Falls, Montana at least through 1956. She says, "Apparently since that time the BIA has stopped funding except for reservation Indians - on what basis beats me."*

11. *Letter from J. Henry Scattergood to Senator Henry Ashurst.*

12. *Department of Interior and Related Agencies Appropriations for 1937. Hearings before a Subcommittee of the Committee on Appropriations, House of Representatives. 74th Congress, 2nd Session, 1936. P. 932.*

13. *Department of Interior and Related Agencies Appropriations for 1936. Hearings before a Subcommittee of the Committee on Appropriations, House of Representatives. 74th Congress, 1st Session, 1935. P. 874.*

14. *Op. Cit. Interior Appropriations for 1937, p. 949.*

15. *Id. P. 932.*

16. *However, some small evidence to the contrary can be found in a comparison of the language of the several bills introduced as predecessors to JOM. At least one of the earlier bills calls for the "transfer to (the States) of activities of the Indian Bureau dealing with the education, . . ." etc., while JOM talks about*

authorizing the Secretary of Interior "to arrange with States . . . for the education . . ." This might indicate that JOM was not intended to be merely a transfer of BIA functions.

17. House Report 864, 73rd Congress, 2nd Session, 1934.

18. Department of Interior and Related Agencies Appropriations for 1951. Hearings before a Subcommittee of the Committee on Appropriations, United States Senate, 81st Congress, 2nd Session, 1950. P. 300.

19. Id. P. 301.

20. Department of Interior and Related Agencies Appropriations for 1961. Hearings before a Subcommittee of the Committee on Appropriations, United States Senate, 86th Congress, 2nd Session, 1960. P. 762.

21. Department of Interior and Related Agencies Appropriations for 1935. Hearings before a Subcommittee of the Committee on Appropriations, House of Representatives, 73rd Congress, 2nd Session, 1934. P. 541.

22. See footnote 15.

23. See footnote 14.

24. Senate Report 511, 73rd Congress, 2nd Session, 1934. Letter to Honorable B.K. Wheeler, Chairman Committee on Indian Affairs, United States Senate from John Collier.

JOHNSON O'MALLEY

This part of the Handbook was prepared by the analysis of the Rules and Regulations to the Johnson O'Malley Act.

The Handbook contains references to the various sections of the Rules and Regulations of August 16, 1974 which became effective on September 20, 1974.

JOHNSON O'MALLEY

Definitions

Section 33.1

(a) Johnson O'Malley Act means the Act of April 16, 1934 (48 Stat. 596), as amended by the Act of June 4, 1936 (49 Stat. 1458, 25 U.S.C. 452--456).

(b) Secretary means the Secretary of the Interior.

(c) Commissioner means the Commissioner, Bureau of Indian Affairs.

(d) Area Director means the administrative officer in charge of a Bureau of Indian Affairs Area Office.

(e) State means a State of the United States of America or any political subdivision thereof.

(f) School District means the local unit of school administration as defined by the laws of the State in which it is located.

(g) Indian means an individual of 1/4 or more degree of Indian blood and a member of a tribe, band, or other organized group of Indians, including Alaska Natives, which is recognized by the Secretary of the Interior as being eligible for Bureau of Indian Affairs services.

(h) Indian Corporation means an Indian controlled corporation chartered under State law, Federal law, or under Tribal authority.

(i) Indian Education Committee means a group selected by Indian parents pursuant to the provisions of this part.

(j) Educational Plan means a comprehensive plan for the programmatic and fiscal services of an accountability by a contractor for the education of eligible Indian students under this part.

(k) Supplemental Programs means those programs which are designed to meet the special needs of Indian students that may result from the socio-economic conditions of the parents, or from cultural and language differences, or other factors. Funds for such programs shall supplement, and not supplant, funds received from any other source.

(l) Operational Expenditures means those expenditures made in support of basic school operational costs in order to meet educational standards established by the State.

JOHNSON O'MALLEY

Q. What is the Johnson O'Malley Act?

A. *The Johnson O'Malley Act is the Act of April 16, 1934 (48 Stat. 596) as amended by the Act of June 4, 1936 (49 Stat. 1458, 25 U. S. C. 452-456) P. L. 74-638 Act of June 4, 1936 Amendment to Johnson O'Malley Act "That the Secretary of the Interior be, and hereby is, authorized, in his discretion to enter into a contract or contracts with any State or Territory, or political subdivision thereof, or with any State university, college, or school, or with any appropriate State or private corporation,agency, or institution, for the education, medical attention, agricultural assistance, and social welfare, including relief of distress, of Indians in such State or Territory, through the agencies of the State or Territory or of the corporations and organizations hereinbefore named and to expend under such contract or contracts, moneys appropriated by Congress for the education, medical attention, agricultural assistance, and social welfare, including relief of distress, of Indians in such State or Territory".*

Section 33.2

Q. Who and what organizations are eligible to enter into a contract?

A. *Under the provisions of the Johnson O'Malley Act, contracts may be entered into with a State, school district, or Indian corporation for the education of Indian children from early childhood through grade twelve.*

Q. How shall monies be expended under the contract?

A. *Monies shall be expended under the contract to benefit of Indian students who are recognized by the Secretary of Interior as being eligible for BIA services because of their status as Indians.*

NOTE: Nothing in these regulations shall prevent the Commissioner from contracting with Indian corporations who expend all or part of the funds in places other than the public or private schools in the community effected.

Section 33.2 (b)

Q. What kinds of educational programs and services are the contracts authorized to pay?

A. *Section 33.2 (c) states that contracts may authorize payments for educational services in two major categories. These are Supplemental Programs and Operational Expenditure.*

Q. How is the per pupil allocation of JOM funds for supplemental programs determined?

A. *The funds are to be apportioned among States on substantially equal basis, based on the number of eligible students for whom funds are sought. Allowance for the actual cost for delivering educational services in each State will be made. The Commissioner shall refer to the Statewide pupil expenditure in determining the actual cost.*

Q. How will the JOM supplemental funds be distributed to the contractors?

A. *Funds for supplemental programs shall be distributed among the contractors within each State so that each contractor will receive approximately the same amount for each eligible student.*

Q. What about funds for very special needs?

A. *The Commissioner may make exceptions based upon the special cultural, linguistic, social and educational needs of certain communities. (We take this to mean that it is possible to obtain a greater per capita amount for each eligible student than the general formula would state.)*

Q. Can Johnson O'Malley funds be used for general operational expenses?

A. *Yes. As previously stated Johnson O'Malley funds can be used for general operational expenses, but only under extraordinary and exceptional circumstances. All these funds used for general operational expenses are to be used to meet educational standards established by the tate and only if provided for in the educational plan required by Section 33.4 (a). "The contract may authorize operational expenditures only when the school district establishes all of the following:*

(a) That it cannot satisfy the applicable minimum State

(a) (Continued)
standards in the absence of such funds;

(b) That it has made a reasonable tax effort with a mill levy in support of educational programs at least equal to the State Average;

(c) That it has fully utilized all other sources of financial aid including all forms of State aid, Public Law 874 payments, etc. The State aid contribution must be at least equal to the average; and

(d) That there must be at least 70% eligible Indian enrollment within the school district or within any particular school served. (Section 33.2(c)(2)).

Q. Should JOM funds be used in place of State and local funds (supplant)?

A. *No. Funds authorized should supplement and not supplant the State and local funds. Each contract shall require that the use of JOM funds will not result in a decrease of State, local and Federal funds, which would be made available for Indian students even if there were no Johnson O'Malley funds available.*

Q. Should Johnson O'Malley funds be used for capital outlay or debt retirement?

A. *No! In no instance should JOM funds ever be used for capital outlay or debt retirement.*

33.2(d) 1.

Q. What should the Johnson O'Malley contracts specify?

A. *The contracts should specify that State school districts receiving Johnson O'Malley funds under the provisions of this part (Sec. 33.2) shall provide educational opportunities to all Indian children within that school district on the same terms and under the same conditions that apply to all students.*

Q. When Johnson O'Malley funds are available to a school district, does it mean a decrease of State aid to the Indian students who qualify for services under the Johnson O'Malley programs?

A. *No! School districts receiving such funds must ensure that Indian children receive all aid from the State, and other proper sources that schools or school districts similiarly situated in the State are entitled to receive.*

Note: In no instance shall there be discrimination against Indians or school enrolling Indian students qualifying for Johnson O'Malley funds.

Section 33.2 (d) (1)

33.2 (d) 2

Q. What course of action can be taken if there is a possible violation of the civil rights of individuals within a school district? (Title VI, Civil Rights Act of 1964).

A. *The Department of the Interior shall, in accordance with Federal requirements, notify the Department of Health, Education and Welfare, conduct an investigation into the alleged matters. If the investigation discloses a failure or threatened failure to comply with this part (Sec. 33.2), and if non-compliance or threatened non-compliance cannot be corrected by informal means, the result may be suspension, termination, or refusal to contract or to continue financial assistance under the Johnson O'Malley Act or by any other means authorized by law.*

Sec. 33.3 Parental Participation and Control

Q. To what extent can the parents participate and control Johnson O'Malley programs?

A. *The Commissioner shall require maximum participation and control by the Indian parents in the community affected. This participation and control refers to the approval and implementation of the Johnson O'Malley programs.*

Q. In what ways is the contractor obligated to work with the Indian Education Committee?

A. *The regulations state that each contractor shall work with the Indian Education Committee. Each contractor may, subject to the terms in its contract, make available part of its contract funds for:*

(a) Conducting elections of education committees;

(b) For attendance of Indian Education committee members at State-wide meetings, workshops, and training;

(c) And for other reasonable expenses incurred by the Indian Education Committee in relation to its primary duties of:

1. *Planning*
2. *Development*
3. *Evaluation*
4. *Monitoring of programs and services funded under the Johnson O'Malley Act.*

Q. What is the procedure for establishing the parent committee?

A. *All Johnson O'Malley Indian Education Committees shall be nominated, selected, and served by procedures determined by the Indian community affected.*

Requirements of the Committee

Each committee shall file a copy of its organization papers and by-laws with the Area Director together with a list of its officers and members.

Note: The selection of an Indian Education Committee shall not limit the continuing participation of the Indian community in the operation and evaluation of the program.

Q. What are some rights, responsibilities, and powers of the Johnson O'Malley Education Committee?

A. *Indian Education Committees have full veto powers over all supplementary programs. Each committee may at its option:*

(a) Make an initial, annual assessment of the learning needs of Indian children in the community affected;

(b) Participate in negotiations concerning all contracts under this part;

(c) Participate in the planning, development, evaluation, and monitoring of all programs funded under this part;

(d) Hear complaints by Indian students and their parents;

(e) Meet regularly with the professional staff serving Indian children and with the local educational agency;

(f) Hold committee meetings on a regular basis which are open to the public;

(g) Have full access to all records maintained by the school concerning all students served by the program;

(h) Establish rules for conducting its meetings; and

(i) Have such additional powers as are consistent with these regulations.

Section 33.3 (d)

Section 33.4 - General Requirements for Contracts

Education Plan

Q. What is required of a prospective contractor and its education committees?

A. *To become eligible for negotiating a contract, a prospective contractor and the education committee(s) must formulate an education plan annually and submit it to the appropriate Area Director as part of the proposal and contract. Such plans shall become a part of any contract awarded.*

Budget Estimates and Financial Information

Q. What is required of the contractor by the Bureau of Indian Affairs regarding budget information?

A. *Each contractor must submit to the Area Director such budget information necessary to determine the program costs for the services to be contracted. If the contractor specifies supplemental expense funds for special needs programs, it shall specify by line item in each school district's program how expenditure of these funds will be made.*

Q. What other information is required when supplemental funding is requested?

A. *When supplemental funds are sought, full information on such programs funded from other supplemental shall be furnished as evidence that there is no duplication of funding or supplanting.*

Q. Could contracts be negotiated to use Johnson O'Malley funds for general operations?

A. *Yes, but it is encumbent on the school district to prove financial need based on the set-out in Section 33.2(c) (2).*

> *33.2 (c) (2) For operational expenditures. All funds for operational expenditures shall be used to meet educational standards established by the State and only if provided for in the educational plan required by S33.4(a) and only under extraordinary or exceptional circumstances. The contract may authorize operational expenditures only when the school district establishes all of the following:*
>
> *(i) That it cannot satisfy the applicable minimum State standards in the absence of such funds;*
>
> *(ii) That it has made a reasonable tax effort, with a mill levy in support of educational programs at least equal to the State average;*
>
> *(iii) That it has fully utilized all other sources of financial aid, including all forms of State aid, Public Law 874 payments, etc. The State aid contribution per pupil must be at least equal to the State average; and*
>
> *(iv) That there exists at least 70 percent eligible Indian enrollment within the school district or within any particular school served.*
>
> *Funds authorized under this part shall supplement, and not supplant, State and local funds. Each contract shall require that the use of these funds will not result in a decrease in State, local or Federal funds which, in the absence of funds under this Part, would be made available for Indian children. In no instance shall these funds be used as payment for capital outlay or debt retirement expenses.*

Note: "In every case where a contract is awarded for operational expenditure formal written determination and findings supporting the need for such funds shall be made by the Area Director and incorporated into the contract". (Section 33.4 (b)).

Reporting

Q. What sort of information is required of the contractor regarding expenditures?

A. *The information as to the type of expenditure for which reimbursement may be sought under the terms of the contract. Each school district or Indian corporation having a sub-contract shall report expenditures by line item. An adequate fiscal accounting system shall be required and maintained. The system must enable identification of expenditures of funds for services contracted. The system must also enable an audit of expenditures.*

Q. How would the educational-plan be correlated to the State Educational Standards?

A. *The educational plan shall provide that the established State standards must be maintained for the operation of Johnson O'Malley programs and services.*

Q. Is Indian preference regarding hiring of the personnel included anywhere in the contract?

A. *Yes! Where funds for supplemental programs are requested, a provision for Indian preference shall be included in the educational plan.*

Inspection of Programs

Q. What provisions have been made for the inspection of the records of the contractor by the Indian Education Commit tee and the Federal Government?

A. *The records of contractors and sub-contractors receiving funds is opened to inspection for the purposes of fiscal and program audit by duly-accredited representatives of the Federal Government and the Indian Education Committee.*

Q. Is the contractor required to make any reports to the Area Director?

A. *The contractor is required to make a detailed annual report to the Area Director for the previous year. Such reports are due before September 15th of each year. The report should contain an evaluation and the effectiveness of the programs for with contract was made.*

The Area Director shall also audit program effectiveness and the financial expenditures for each such contract during the contract year. Any questioned claim or expenditure shall be maintained until final determination by the Commissioner is made.

Q. What information should schools affected by any JOM contract provide the Indian Education Committee?

A. *All schools affected by the JOM contract shall provide members of the Indian Education committee with full access to all records concerning all students served by the program.*

Parental Participation

Q. What provisions have been made to assure parental participation?

A. *Provisions for parental participation is to be included by the contractor in the educational plan submitted. It must comply with the provision set for in Section 33.3.*

Q. What provisions exist to assure that visits to schools and consultation will be made with the school officials by appropriate groups or individuals?

A. *Educational facilities affected by the funds must be opened to visits and consultations by duly-accredited representatives of the Federal Government, by Indian parents in the community, by members of the Indian Education Committee, and by tribal officials.*

Q. What provisions have been made for the inspection of documents?

A. *The contractor should make available to each member of the Indian Education Committee copies of all contracts, records, reports, budgets, budget estimates, plans, and other documents pertaining to preceding and current year administration of the contract program. The contractor and the local school*

A. *(Continued)*
officials should make available all such documents to the public for inspection, upon request, The contractor or local school officials are to provide free of charge, single copies of the document upon request.

Q. Are State employees permitted to enter upon Indian lands for any reason whatsoever?

A. *State employees may be permitted to enter Indian lands, reservations, or allotments provided a duly-constituted governing body of the Indian Tribe adopts a resolution of consent for:*

(a) The inspection of conditions of public schools located on such lands; and

(b) To enforce State compulsory school attendance laws against Indian children, parents, or surrogate parents.

Section 33.6 - Use and Transfer of Federal Property

Q. Can Federal facilities be used for public school purposes?

A. *Federally-owned facilities may be used for public school purposes when authorized and when facilities are not needed for Federal activities. Section 33.6 states that transfer of title to such facilities may be made under the provisions of the Act of June 4, 1953 (67 Stat. 41).*

Transfer of non-expendable Government property.

Section 33.6 states the following:

(a) When non-expendable Government property is turned over to public school authorities under a use permit, the permittee shall insure such property against damage by fire, rain, windstorm, vandalism, snow, and tornado in amounts and with companies satisfactory to the Federal officer in charge of the property. In case of damage or destruction of such property by fire, rain, windstorm, vandalism, snow or tornado, the insurance money collected shall be expended only for repair or replacement of property. Otherwise, insurance proceeds shall be remitted to the Bureau of Indian Affairs.

(b) If the public school authority is self-insured and can present evidence of such fact to the Area Director, insurance for lost or damaged property will not be required, provided however that the public school authority will be responsible for replacement of such lost or damaged property at no cost to the Government or for remitting funds to the Government sufficient for replacement of the property.

(c) The permittee shall maintain the property in a reasonable state of repair consistent with the intended use and educational purposes.

PART III - A

PUBLIC LAW 81-874

GENERAL INFORMATION

Public Law 874 generally known as "Impact Aid" was passed by Congress in 1950 to provide financial assistance for the maintenance and operation of schools in federally affected areas. Authorization for the federally affected areas program under Public Law 81-874 is contained in Sections 1 through 6 of Title I and also under the new Title IV of Public Law 874 as amended by Public Law 92-318. Section 7 of Title I extends financial assistance to local education agencies affected by a major disaster. Details on Section 7 and the program of disaster assistance are treated separately in this part.

Public Law 874 now has four major titles.

Title I	- Provides financial assistance for local educational agencies in areas affected by Federal activity.
Title II	- Provides financial assistance to local educational agencies for the education of children of low income families.
Title III	- Financial assistance to local educational agencies for the education of Indian children. (This is the same as Title IV of Public Law 92-318, Part A already discussed in Part I of this Handbook).
Title IV	- General: Regarding administration of 874 funds.

Since Title I of Public Law 874 is most related to our discussions about Indian education program funds as supplemental program funds we shall emphasize our discussion of Title I here.

Public Law 81-874, Title I, as it relates to Indian children

When Title I of the Public Law 81-874 was first enacted in 1950, Indian children eligible for and receiving educational assistance under the Johnson O'Malley program administered by the Bureau of Indian Affairs were ineligible for assistance. This ineligibility resulted from the exclusion of such Indian children from the definition of "child" for purposes of eligibility and payment. However, in 1953 the Act was amended to provide that the Governor of a State could elect to receive financial assistance for the education of Indian children under either the Johnson O'Malley program or the school assistance program of Public Law 81-874, Title I.

Public Law 85=620 further amended Public Law 874 in 1958 with respect to the exclusion of Indian children for eligibility and payment purposes. Among other changes, Public Law 85-620 changed the definition of "child" by eliminating the provisions which excluded Indian children. The provisions which permitted the Governor of a State educating Indian children to elect to receive payments under the school assistance program for those Indian pupils in lieu of payments under the Johnson O'Malley program was also repealed. Consequently, Indian children became eligible for inclusion under Public Law 81-874, Title I, as of July 1, 1958.

Public Law 81-874, Title I, currently provides that the school district providing free public education of children residing on, or whose parents are employed on tax exempt Federal property are eligible for financial assistance under the Act. The statute reads in part, "....notwithstanding any other provisions of this Act, where the local educational agency of the school district in which any child resides, makes or contracts to make a tuition payment for the free public education of such child in a school situated in another district, for purposes of this Act the attendance of such child in such school shall be held and considered to be in attendance at a school of the local educational agency so making or contracting to make such tuition payment." Since the Act no longer makes any distinction of Indian children but rather on the residence of and employment of parents of these children on tax-exempt Federal property, Indian children are eligible to be counted in the determination of such an applicant's entitlement.

For the purposes of Public Law 81-874, Title I, the term "Federal property" means real property which is owned by the United States, or is leased by the United States, and which is not subject to taxation by any State or any political subdivision of a State or by the District of Columbia. The term includes, except for the purposes of Section 6 of the Act, real property held in trust by the United States for individual Indians or Indian tribes, and real property held by individual Indians or Indian tribes which is subject to restrictions on alienations imposed by the United States.

Hence, the determination of eligibility for Indian children in a school district's claim to receive financial assistance under Public

Law 81-874, Title I, centers on the provision of free public education to that child if he is residing on or with parents who are employed on Federal property. The only provision targeted to Indian children is their eligibility to be counted as Subsection 3 (a) category children if they reside with parents who live on Indian lands (Federal property as defined) but are not regularly employed.

Approximately 66,000 children federally connected to Indian lands are currently claimed by over 550 applicants for financial assistance under the Act. Payments based on the claims for these children are deposited in the general maintenance and operations expense accounts of the school districts and are used along with other program funds to maintain the program of educational service for all children attending schools in the district.

PUBLIC LAW 81-815 - IMPACT AID

GENERAL INFORMATION

Public Law 81-815 is commonly referred to as a companion measure to Public Law 874 (previously discussed). However, the basic difference is that while Public Law 874 funds are for support of basic education programs for school operations, Public Law 815 funds are for assisting federally affected area schools with financial assistance for construction of urgently needed minimum school facilities.

As with Public Law 874 funds, there is no accountability after a school district is declared eligible for its share.

Of all the Indian supportive Federal education programs, Public Law 815 has the worst funding record because of several factors. Inadequate congressional appropriations is the major factor, followed by priority allocation policies which 1) sets aside a percentage of appropriations for disaster relief such as the California earthquake, the Louisiana hurricane and subsequent floods; and 2) giving priority consideration for funding military school buildings over Indian school buildings.

In addition there has always been a policy of giving first priority to minimum needed facilities, but although the money is given because of Indian enrollments, the school district is free to decide where the greatest building needs lie. They do have to get Federal acknowledgement that minimum facilities do not already exist.

NOTE: The law specifically prohibits buildings which involve spectator activities (gymnasiums, stadiums, etc.)

The basis for Public Law 815 awards are on the increase in number of federally connected children multiplied by a percentage of the cost of constructing minimum school facilities in the State in the second preceding year.

NOTE: This section of the Handbook is very general and does not go into questions and answers. We of Indian Education Training, Inc. are in the process of updating related information and developing relevant questions and anwers.. Holders of this Handbook who are on our mailing list will receive these and all other current information to be added as program policies and laws change.

INTRODUCTION

The Child Nutrition Programs are programs you should be aware of if your concern is to provide good education to your children. Specialists in the field of nutrition have claimed that lack of good nutrition is hampering to the learning of the children. Thus, the Department of Agriculture shows concern and provides funding for school feeding programs which will provide good nutrition for the nation's children.

This Handbook includes information about three basic programs which directly effect your children. They are school lunches, breakfasts, and milk programs.

If such programs do not exist in your schools and you see an obvious need for them do something about it.

Agencies and groups who would help are:

The Children's Foundation
1028 Connecticut Avenue, N.W.
Suite 614
Washington, D.C.
Attention: Barbara Bode or
Linda Sinclair

School Nutrition Services
State Department of Education
Santa Fe, New Mexico
Attention: Gretchen Plagge

Navajo Division of Education
The Navajo Tribe
Window Rock, Arizona
Attention: Eddie Brown

New Mexico Indian Education
Board of Regents
Albuquerque, New Mexico
Attention: Edwin Yazzie

SCHOOL NUTRITION PROGRAM

Q. What is the National School Lunch Program?

A. *The National School Lunch Program is a program which was authorized by the National School Lunch Act of 1946 and the Child Nutrition Act of 1966 to provide for every American school child food commodities and financial support for a free or reduced price lunch. As stated in the Regulations of September 4, 1970, Sec. 2 of the National School Lunch Act was amended to read, "to safeguard the health and well-being of the nation's children and to encourage the domestic consumption of nutritious agricultural commodities and other food, by assisting the States, through grants, in aid and other means, in providing an adequate supply of foods and other facilities for the establishment, maintenance, operation, and expansion of non-profit school lunch programs."*

The School Lunch Act of 1946 also made provisions for an outlet for surplus foods. In addition to this, it provided employment for the many unemployed.

Q. Does this mean that a participating school must provide all meals either free or on a reduced price rate?

A. *No. Children must be eligible for a free or reduced price meal based upon criteria set by the Secretary of Agriculture. The participating schools, however, are reimbursed for all students at a rate of 11.75¢ per child. This helps encourage schools to participate. Despite this, a national survey, conducted in the summer of 1974, indicated that a total of 18,297 public and private schools nationally do not participate in the National School Lunch Program. Of these, 4,646 are considered needy schools serving a total enrollment of 899,898 children. In all,95.3% participated in the National School Lunch Program.*

Q. How do States become participants?

A. *The State Agency submits an application along with the State Plan of Operation. The State Plan of Operation will include:*

> *the number of schools and the number of children in schools needing lunch (and breakfast) programs. (The aim is to provide a free and reduced price lunch for every needy child)*

the number of service institutions in need of Special Food Service Programs (SFSP) for children on a year around and summer basis with the number of potential participants. (SFSP is made available for special service institutions such as nonprofit or public institutions such as child day care centers, settlement houses, recreation centers providing day care. It also includes private or nonprofit institutions providing summer programs and private or nonprofit institutions providing services for handicapped children.)

the estimated amount of State funds available to match Federal funds for financing the program so that the applying school will furnish a free or reduced price lunch and/or breakfast to every needy child, eventually extending the program to every school in the State, giving priority to schools with a high concentration of needy children.

After review of the plan of the State Agency, the Department of Agriculture enters into a written agreement with the State. States which are already participating shall submit a State Plan for approval. It is to include a report of accomplishments set for the prior fiscal year and set forth the progress being made under the plan for the current fiscal year.

Q. Suppose a State Plan was refused by the Department of Agriculture?

A. *The State Agency may submit for approval a revised plan.*

Q. Is it possible for the State Plan to undergo changes within a fiscal year?

A. *Yes. There is an allowance for amendments at any time.*

Q. Are State public schools the only schools eligible to participate?

A. *No. All nonpublic, nonprofit schools are eligible as well. In addition, other private nonprofit institutions and public institutions (such as day care centers, settlement houses, recreation centers, which provide day care center or other child care where children are not maintained in residence, for children from areas in which poor economic conditions exist or areas in which there are high concentrations of working mothers) are eligible for participation in Special Food Services Program. It also* *includes private nonprofit and public institutions that carry on special summer programs for children from such areas.*

Q. What must schools do to participate?

A. *Schools will make a written application to the State Agency if they have not participated in the previous fiscal year. The application will include the name and address of the food authority of each school where the program will be operated. The following information is to be made known:*

the beginning date of lunch service under the program;

the estimated average daily attendence (membership) figures;

the lunch price to be charged;

the estimated daily number of free or reduced price lunches to be served;

amount of funds and the value of the food on hand for the program at the time of the application.

Q. When schools become participants, is there any guarantee that they will provide free and reduced lunches?

A. *The schools must submit to the State a free and reduced price policy statement containing the following: (§ 245.10)*

1. *Official(s) designated by the school food authority to make eligibility determination for free or reduced price lunches;*

2. *Complete family size, income and other criteria which comprise the eligibility standards for free or reduced price lunches;*

3. *Specific procedures the school food authority will use in accepting applications from families for free and reduced price lunches and any alternative method(s) it intends to use in making eligibility determinations;*

4. *Description of method(s) used to collect payment for those who pay the full price or the reduced price lunches which will not overtly identify those students receiving free or reduced price lunches; (i.e. separate lines, tickets, etc.)*

5. *Assurance that the school will abide by the hearing procedure and the nondiscrimination practices.*

6. *Attachment of a copy of the application form to be used by the school and of the proposed letter or notice to be sent to the parents.*

Q. What are the requirements that schools have to adhere to in its participation?

A. *Each school will be required to do the following:*

1. *Operate a nonprofit lunch program and use program income only for the program purposes. Provided, however, that such income shall not be used to purchase land, to acquire or construct buildings, or to make alteration of existing buildings. Only program income from sources other than Federal or children's may be used to finance out-of-state travel of school lunch personnel or to purchase a passenger automobile.*

2. *Limit its operating balance to a level consistent with program needs; and upon request by the State Agency explain the need for balances of more than two months' operating cost;*

3. *Serve lunches which meet the requirements for a Type A lunch (which is a lunch meeting high quality nutritional requirements) during the period designated as the lunch period by the school and price Type A lunch as a unit; (see attachment describing Type A lunches)*

4. *Supply lunches without cost or at reduced price to all children who are determined by the school authorities to be unable to pay the full price thereof;*

5. *Make no discrimination against any child because of his inability to pay the full price;*

6. *Claim reimbursement only for the type of lunches schools agree to serve in Schedule A of the application;*

7. *Submit claims for reimbursement in accordance with procedure established by the State Agency;*

8. *Maintain in the storage, preparation, and service of food, proper sanitation and health standards in conformance with all applicable State and local laws and regulations;*

9. *Purchase in as large quantities as can be efficiently utilized in the lunch program, foods designated as plentiful by the State Agency.*

10. *Accept and use in as large quantities as can be efficiently utilized in the lunch program, such foods as may be offered as a donation by USDA through the Commodity Division;*

11. *Maintain necessary facilities for storing, preparing and serving food;*

12. *Maintain full and accurate records of the lunch program and retain such records for a period of five years after end of fiscal year to which they pertain;*

13. *Maintain separate ledger or bank account. School lunch funds must be clearly identifiable, with adequate audit trail for all transactions, this ensures that lunch money is not used for other purposes;*

14. *Upon request, make all accounts and records pertaining to the lunch program available to State Agency and/or United States Department of Agriculture for audit or administration review at a reasonable time and place;*

15. *Provide the correct amount of State funds to match the amount of Federal reimbursement paid to program;*

16. *Ensure that claim for reimbursement will not be made for adult lunches, or adult milk;*

17. *Ensure that teachers will not be served free meals.*

Q. Who determines which American child is needy in the schools?

A. *The determination is based upon income guidelines as established by the Secretary no later than May of each year. Based upon the set standards, the States are allowed to come up with their own guidelines using the Secretary's prescription as a base. The State may set standards as high as 25% above the guideline as established by the Secretary in order to include more children.*

Guidelines are established by the Secretary for free lunches as follows:

INCOME ELIGIBILITY GUIDELINES FOR FREE AND REDUCED PRICE MEALS

FREE MEALS

Family Size	*Amount of yearly income earned (income poverty guideline)*	*25% above income poverty guideline*
1	*$ 2,330*	*$ 2,910*
2	*3,060*	*3,830*
3	*3,790*	*4,740*
4	*4,510*	*5,640*
5	*5,180*	*6,480*
6	*5,850*	*7,310*
7	*6,450*	*8,060*
8.	*7,050*	*8,810*
9	*7,610*	*9,510*
For each additional family member add..$540		*670*

GUIDELINES ESTABLISHED FOR REDUCED PRICE LUNCHES

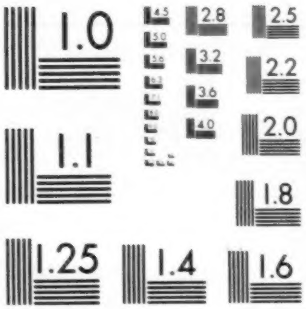
1	*$ 4,080*
2	*5,360*
3	*6,630*
4	*7,900*
5	*9,070*
6	*10,240*
7	*11,290*
8	*12,340*
9	*13,320*

For each additional family member add...$940

Q. It is known that in a number of areas, children were made to stand in separate lunch lines, eat at special designated time periods, and served a different meal from what paying students received. Is there an existing law prohibiting such?

A. *Yes. Sec. 245.8 of the Federal Regulations prohibits any overt discrimination against children receiving free or reduced price lunch (the same goes for breakfast). Children who receive free or reduced price lunches are to do so in a manner which will not embarrass them. Children who participate cannot:*

> *work for their meals (although they can work and be paid for their work);*


1.0
4.5
5.0
5.6
6.3
2.8
3.2
3.6
4.0
2.5
2.2
2.0
1.1
1.8
1.25
1.4
1.6

MICROCOPY RESOLUTION TEST CHART
NATIONAL BUREAU OF STANDARDS-1963-A

use separate lunch lines, lunchrooms or have a separate entrance;

eat at a different time;

eat a different meal;

use overt identification such as special tickets, tokens which identify them as needy children.

Q. Are all schools within a participating school district required to participate?

A. *Yes. Failure to do so would be discriminating by not providing for equal educational opportunity. The Fourteenth Amendment of the Constitution of the United States guarantees that all people be treated equally. This means that all children should receive benefits such as the school lunch program (and even the breakfast program) if other children in other schools receive such benefits.*

Q. What is the responsibility of the schools in encouraging students to participate in the School Lunch Program?

A. *§ 245.5 states the following: "Each school food authority of a school participating in the program or of a commodity only-school shall publicly announce the standards for determing the eligibility of children or free and reduced price lunches in such schools." Each year on or about the beginning of the school year, a letter or notice is to be distributed to the parents of children in attendance at schools. The letter or notice is to include the following:*

1. *the eligibility standards including all criteria with respect to free lunches and with respect to reduced price lunches;*
2. *how a family may make application for a free or reduced price lunch for its children, and*
3. *how a family may appeal the decision of the school food authority with respect to such application under the hearing procedure as will be discussed.*

Public release in the form of radio, television, newspapers, etc. are to be utilized in areas from which the schools draws its attendance at the beginning of the school year. Also, schools must let people know the procedures in applying for free or reduced price lunches. Likewise, procedures used for confidentiality of participating students must be made known. Procedures for appeals *for decision of the school official in eligibility determination also must be made known. Schools should also provide the names of official(s) who determine who should be eligible.*

Q. Who would enforce this practice?

A. *The State Education Agency is responsible in providing schools with this information. It is also their responsibility to see that the schools meet these criteria.*

Q. What is required of parents in filling in the application forms?

A. *Federal regulations require that the application forms be kept short and simple. The only questions to be answered are:*

amount of family income;

size of family;

number of children attending school.

Schools should not force questions which may be irrelevant to the above.

Q. What are the procedures if a child is refused to participate in the free or reduced price lunch program?

A. *Rules and regulations require a fair hearing procedure. Each school food authority shall establish a hearing procedure under which a family can appeal. Such a hearing shall provide:*

1. *a simple, publicly announced method for a family to make an oral or written request for a hearing;*
2. *an opportunity for the family to be assisted or represented by an attorney or other persons in presenting its appeal;*
3. *an opportunity to examine, prior to and during the hearing, the documents and records presented to support the decision under appeal;*
4. *that the hearing shall be held with reasonable promptness and convenience to the family and that adequate notice shall be given to the family as to the time and place of the hearing;*
5. *an opportunity for the family to present oral or documentary evidence and arguments supporting its position without undue interference;*

6. *an opportunity for the family to question or refute any testimony.*

Q. How are funds apportioned to the State, that is, how is the total available Federal money divided up among the States?

A. *The available money is apportioned (or divided up) on the basis of two factors, the participation rate and the assistance need rate. The participation rate indicates the number of lunches being served in the State, so that if a State serves more lunches to more kids, it gets more money. The assistance need rate indicates how poor a State is, compared with other States, so that a poor State that is serving a certain number of lunches will get more money than a rich State which serves the same number of lunches.*

Q. Suppose the State runs out of money before the fiscal year ends?

A. *In that case, funds not utilized in other States will be reapportioned as well as additional funds if available.*

Q. Suppose a State does not fully utilize its share of funds?

A. *Such funds will be apportioned to other States in need.*

Q. How is the program administered?

A. *Within the Department of Agriculture, the Food and Nutrition Service will administer the program. The State Agency is then delegated to administer out to the schools. In States where State laws prohibit the State Educational Agency in administering out to private schools, the Food Nutritional Service Regional Office will administer to such private schools.*

Q. Are those States currently participating in the Lunch Program automatically participants the following school year?

A. *No. Not later than January 1 of each fiscal year, each State Agency shall submit to Food Nutritional Services for approval a State Plan of Child Nutrition Operation for the following fiscal year.*

Q. In addition to cash assistance how else are schools assisted when participating in the School Lunch Program?

A. *Commodities are provided for schools in addition to the cash. However, this does not necessarily mean that schools receiving commodities also receive cash assistance. Such schools are referred to as commodity-only schools, which actually means that such a school does not participate in the NSLP, but receives commodities donated under Part 250 for a nonprofit lunch program. In addition to this, funds are available for equipment.*

Q

Q. What is meant by the matching of funds?

A. *Matching means that for every so much money put up by the Department of Agriculture, the State has to put up so much. In this case the Federal government puts up one dollar and the State source is to match it by three dollars. However, if the per capita income of a State is less than the per capita income of the United States, the matching requirement is to be decreased by the percentage which the State per capita income is below the per capita income of the United States.*

Q. What is meant by the State sources?

A. *§ 210.6 explains that such sources include;*

1. *funds expended for the program, including program administration by the State or its political subdivisions or by on behalf of any school, from children's payments or from any other source of State or local funds, except funds expended for land to the acquisition, construction or alteration of buildings; and*
2. *value of the commodities, services, supplies, facilities, and equipment donated to the program, except the value of commodities donated by FNS or the value of land or the rental value of buildings used in connection with the program. The value of donations eligible for matching shall be certified by the State Agency or by the nonprofit private schools with respect to which the program is administered by Food Nutritional Regional Office.*

Q. How is one sure that this matching requirement is being met and how does one find out if such is being met?

A. *The State Agency or Food Nutritional Services Regional Offices (FNSRO) (where applicable) is responsible. In cases where such requirements are not being met by the schools, the State Agency or FNSRO is to take corrective action.*

Q. Suppose the State is unable to match the full amount for the cash assistance funds?

A. *In such a case, the State is required to return to Food Nutritional Services the amount of the funds which it did not match in accordance with the requirement.*

Q. What is the reimbursement rate for free lunches and reduced price lunches?

A. *52.5¢ is reimbursed for every child receiving free lunches and 42.5¢ for every child receiving reduced price lunches. Not only this, all children in the participating schools bring in 11.75¢ each. In essence, the free lunch child brings in 64.15¢ each and the reduced price lunch child brings in 54.25¢ each.*

These amounts are recent and have been in effect as of January 1, 1975 as readjusted in accordance with the Child Nutrition Legislation (escalator provision).

Q. Are Johnson O'Malley funds still used for lunches for Indian students?

A. *Yes and no. No, because in 1970, the Department of Interior and the Bureau of Indian affairs announced transfers of Johnson O'Malley responsibility of lunches for Indian students over to USDA. This was to be done in a period of three years, ending in 1973. Yes, because the Johnson O'Malley regulations calls for parental involvement and parental decision making. If parents want to take care of those students who are ineligible for USDA free or reduced price meals with Johnson O'Malley funds it is their preference as long as they adhere to Johnson O'Malley rules and regulations.*

Q. After the three year phase-in period, what happened to Indian students who did not qualify under eligibility guidelines as set by the Secretary of Agriculture?

A. *Mainly they got turned down. However, within that three year phase-in period the issue of blanket certification and treaty rights came into existence in the State of New Mexico.*

Q. Didn't the Department of Agriculture put a stop to blanket certification?

A. *Yes. The Department of Agriculture claimed there were abuses. They claimed that there were areas where students, although not in need, received free or reduced price lunches only because their* *schools received blanket certification. However, in 1972, Deputy Assistant Secretary, Philip C. Olson addressed the topic of categorical eligibility in relation to Indian children by writing to Commissioner Bruce the following:*

> *"although the per capita income data provided by OEO does not justify the Department to nationally authorize categorical certification, it does appear that State and local authorities may be able to use the data for justification on a local basis;*
>
> *to summarize, under the National School Lunch Act we cannot certify all Indian children as eligible for free lunches. However, State and local authorities can categorically declare children eligible if they have reason to believe, other than by application, that the children meet the school's eligibility criteria and if they document their records accordingly."*

The letter which included this statement was received in the Commissioner's office August 17, 1972. It made numerous references to Title I and its criteria. Title I's income guidelines for eligibility is lower than that set by USDA for free or reduced price lunches. Thus Leonard Delayo, Superintendent of Schools for the State of New Mexico, was placed in a position to declare categorical certification for groups of children from various communities, pueblos, and on a State level if he had accompanying data which would justify his actions. Mr. Delayo did declare that Indian children were eligible for categorical certification, but based his decision on what he called treaty rights.

Q. Are Indian students in New Mexico receiving free lunches without documentation of eligibility as a result of Mr. Delayo's decision?

A. *The governors of the 19 Pueblos are taking full advantage of the declaration. Thus, the governors blanket certify all Indian children who provide their names and census number indicating she or he is a member of the Pueblo that she or he is requesting approval from. Based upon treaty rights, applications as required by USDA are not required as earlier described. However, not all tribes in the State participate in this type of categorical eligibility certification.*

Q. Is it because such tribes do not want to blanket certify or is it because they do not know about it?

A. *The State Agency in charge of School Feeding Programs has indicated that all tribal groups in New Mexico were made aware of such a right. As far as it is known, the Pueblos are the only groups making such an allowance for their Pueblo students.*

A memo dated August 30, 1974 emphasised such a policy. The memo is addressed to all school district administrators and tribal leaders. It states:

> *"In order to make maximum use of available USDA funds for feeding Indian students, the following procedure should be followed:*
>
> 1. *an individual application must be on file for each Indian child who is to be included in the USDA free meal program;*
>
> 2. *each application will include the name or names of the student(s) and the name of the parent or guardian. The signature of the parent is not required;*
>
> 3. *on file with these applications must be a certification of eligibility of students by the appropriate Governor, President, or Chapter House President. In the case of a student whose reservation is not in the school district, the parents of that student or an administrator from the above mentioned certification;*
>
> 4. *the tribal leader's certification of eligibility will stand in lieu of information requested on each application. The certification shall state:*
>
>   *I, (tribal leader, reservation) certify the Indian students included on the attached application as being eligible for USDA free meals."*

Q. Does this declaration of treaty rights apply to breakfast as well?

A. *This same declaration also applies to the Breakfast Programs. The 19 Pueblos use the same procedures as they do in the Lunch Program.*

ATTACHMENT

TYPE A LUNCHES

One half pint of milk as a beverage.

Two ounces (edible portion as served) of lean meat, poultry, or fish; or 2 ounces of cheese; or one egg; or one half cup of cooked dry beans or peas; or four tablespoons of peanut butter; or an equivalent quantity of any combination of the above listed foods. To be counted in meeting this requirement, these foods must be served in a main dish or in a main dish and one other menu item.

A three fourths cup serving consisting of two or more vegetable or fruits, or both. Full strength vegetable or fruit juice may be counted to meet not more than one fourth cup of this requirement. One slice 6f whole grain or enriched meal or flour.

One teaspoon of butter or fortified margarine.

BREAKFAST PROGRAMS

Q. What is the Breakfast Program?

A. *The School Breakfast Program is part of the Child Nutrition Program administered by the Department of Agriculture. The Child Nutrition Act of 1966 authorized cash and food assistance for pilot breakfast programs in an effort to improve diets of school children, particularly those needy children who arrive to school without breakfast, and children who travel long distances to school.*

Schools serving breakfasts are eligible under this Act for cash reimbursements and for donated foods that are available from the United States Department of Agriculture. In addition, the Child Nutrition Act authorizes funds for equipment needed to establish or expand breakfast programs where local resources are inadequate.

Q. Are those schools participating in the National Lunch Program also required to take part in the Breakfast Programs?

A. *No. As a matter of fact, breakfasts are less popular than lunches. Again, the June 1974 survey indicated that 10,373 of all schools participated in the breakfast program which is approximately 8% of all schools participating. However, here again it would seem that the child is hampered in learning by being hungry. Schools should not be allowed to deny such a child a program which is available on a national and State level.*

Q. What are the reimbursement rates for breakfast?

A. *As of January 1, 1975, the following rates went into effect:*

all breakfast served	*9.25¢*
all breakfast served free	*23.25¢*
all breakfast served at a reduced rate	*17.5¢*

Here again if a school is participating, the Federal govenment reimburses for each attending child (including children not eligible for free or reduced price meals) the rate of 9.25¢. The child eligible for free breakfast brings in 32.5¢ and the reduced price child brings in a rate of 26.75¢, paying the difference himself.

Q. Many schools claim that it is very costly serving breakfast to children and therefore do not participate. Is there an alternative to this?

A. *If it is true that hungry children did not learn as well as they would have if they were not hungry, then schools who are responsible for providing education are shortchanging children they should be serving. There are alternatives. The breakfast program provides that a school may be considered for rates of payment in excess of the usual maximum rates of payment if it is an especially needy school. The State Agency will determine when a school is needy based on the presence of these factors:*

> *the need to serve an especially high percentage of such free and reduced price breakfast to children meeting the school's eligibility standards;*
>
> *unusual cost required to provide breakfast in the school;*
>
> *other unusual factors indicative of a special financial need.*

Based upon this, there is no reason why a school should refuse to participate because of high cost factor. Furthermore, schools which continue to refuse to participate in the breakfast program despite the obvious need and despite parental request, are denying children of that school an equal educational opportunity and could be in violation of the Fourteenth Amendment to the Constitution.

Q. It is known that some school officials refuse the breakfast program based on the argument that "breakfast" is usually served mid morning due to work load of kitchen personnel and thus, interferes with lunches because children are usually not hungry when lunch time comes around. Is there any requirement that breakfast should be served as soon as children arrive at school?

A. *No. However, Federal Regulations defines breakfast as "a meal served to school children at the beginning (emphasis added) of a school day which meets the nutritional requirements set out in this part." It appears that if schools are concerned with the welfare of their children that they could have meals ready when kids arrive before school. Schools are for the benefit of kids, not administrators or kitchen personnel. If extra labor costs are incurred by having meals ready earlier, this may make the school eligible for reimbursement at a higher rate. It might even be possible for part of the meal to be served on the bus on the way to school.*

Q. Are schools participating in the breakfast program required to serve a specific type of breakfast daily?

A. Yes. The School Breakfast Program regulations require that a breakfast shall contain as a minimum the following:

> *one half pint fluid whole milk served as a beverage or on cereal or used in part for each purpose;*
>
> *one half cup serving of fruit or full strength fruit or vegetable juice;*
>
> *one slice of whole grain or enriched bread; or an equivalent serving of cornbread, biscuits, rolls, muffins, etc. made of whole grain cereal or enriched or fortified cereal;* *or* *an equivalent quantity of any combination of these foods.*

To improve the nutrition of participating children, breakfast shall also include as often as practicable:

> *one egg; a one ounce serving (edible portion as served) of meat, poultry, or fish, or one ounce cheese; or two tablespoons of peanut butter; or an equivalent quantity of any combination of any of these foods.*

THE MILK PROGRAM

Q. What is the Milk Program?

A. *The Special Milk Program is a program enacted in 1954 to provide cash assistance to help reduce the cost of milk served to children and at the same time provide an outlet for the milk market. The program encourages consumption of fluid milk by children.*

Q. How does the Child Nutrition Act of 1966 relate to the Milk Program?

A. *The Child Nutrition Act of 1966 extended the period of the Milk Program, which was coming to an end. (This program since then has been extended several times.) The Act also expanded upon the program to include:*

1. *nonprofit schools of high school grade and under, and*
2. *nonprofit nursery schools, child care centers, settlement houses, summer camps, and similiar nonprofit institutions devoted to the care and training of children.*

Q. What has been allocated for the Milk Program for the current year?

A. *The funding level for the current year has been set at $117,978,300. States were allocated 114,500,664. The remaining amount was held for private schools. In New Mexico, the State Agency administers to private schools, therefore receiving a total of $534,102 for both the public and private schools. $275,033 was apportioned to the public schools and $250,009 was set aside for private schools. In the States of Arizona and Oklahoma, all funds allocated to the State went to the State to be apportioned to the public schools. The reason may be that in such States, State Agencies do not administer to private schools. In such a case a division within the Department of Agriculture is responsible for such administering. The State of Arizona received the total amount of $332,656, and the State of Oklahoma received a total amount of $984,743. This of course does not include private schools.*

Q. If a school is a participant in the National School Lunch Program and/or the Breakfast Program, does that mean that school is automatically a participant in the Special Milk Program since the National School Lunch and the Breakfast Program require that certain types of food be served, both including milk?

A. *No. It is true that milk is required in both programs, however, this does not mean that schools participating in the Lunch and Breakfast programs are also participating in the Milk Program. Schools have to apply separately for the Special Milk Program.*

This should be clarified further. Schools are allowed to go several routes. A school district can participate in the National Lunch Program, and exclude the Breakfast and Milk Programs The Child in such a school receives milk as part of lunch however, does not get second one half pint of milk or is asked to pay for the full cost of the milk. The Federal government does not reimburse for second milk.

A school may participate in the National Lunch Program and the Breakfast Program and not the Special Milk Program. In this case all children receive one half pint milk with their lunches and breakfasts. Again the second half pint is charged at a full cost to the child. This is called a pricing program. The cost of the milk is set by the school. Schools do not normally make profit; if anything, they usually break even.

A school may participate in all of the programs, the Lunch, Breakfast and Milk Programs. All children receive first one half pint milk free with lunches and breakfast. The second half pint is given free to those children receiving free lunches and breakfasts. All the other children are charged a reduced rate varying again among the various schools for the second half pint. Usually milk is priced at 12¢ - 15¢ a half pint. The Federal government reimburses for children (usually other than those receiving free lunches and breakfasts, therefore free milk) a rate of 5¢ per half pint served. Thus, the paying student is charged the difference which is usually a rate of anywhere from 7¢ to 10¢ per half pint depending again upon the price the school puts on the milk served. In the case of those students receiving the second free milk as a result of free lunches and breakfast, the Federal government reimburses the full cost of the milk or 100% of the total cost of the half pint milk per child participating in the free program.

Q. Are teachers or other school personnel eligible to receive free milk?

A. *No. There will be no reimbursements made by the Federal government for those adults served milk, whether the adult is employed or enrolled for care and training. One of the requirements for school participation is to provide the total number of persons regularly having access to milk service. To be included are the number of children, adult staff members and employees, adults enrolled for care and training, and total persons in attendance. Teachers or any other adult staff member or adult in care or training will have to pay full cost of the milk. In this case students enrolled in school classes above the 12th grade level, and all persons 21 years or older attending camps or receiving care training as enrollees of the institution are referred to as adults in care or training.*

INTRODUCTION

Title I of the Elementary and Secondary Education Act (ESEA, P.L. 89-10) of 1965 provides financial assistance to school districts for economically and educationally deprived children who may need extra help to do well in school. Title I is the largest Federal aid to education programs.

Title I programs in the beginning were implemented on a crash basis with few guidelines for school districts on how to spend the money. Some of the expected results of more opportunities for a better education and ensuing benefits have not always been realized. Perhaps some of this could be attributed to the fact that the "needs" of the target group had been ignored.

It is most important that parents know and understand what Title I is about. It is especially important if the parents are on the advisory council.

The following information would give those interested a general background to know the intent and purpose of Title I funds. Title I has been amended several times since it became law in 1965. The most recent of these is in the passage of Public Law 93-380, August 21, 1974, which is cited as the "Educational Amendments of 1974." Additional information will be sent to holders of this manual by Indian Education Training, Inc. as soon as analyses of the amendments of the Law and the Rules and Regulations are made.

TITLE I

Q. How can Title I funds be used?

A. *Title I of P.L. 89-10 does not limit the kinds of educational and educationally related services that can be provided with funds obtained under this law. The intent of the law states that funds will be given to the school district to meet "the special educational needs of educationally deprived children."*

NOTE: The word "special" means that Title I funds should not be used for the regular school services for needy children. The State and school district must provide the basic education for all children. Title I, then should provide the extra services.

Q. Is Title I a type of a "welfare" program?

A. *The word "educational" indicates that Title I programs and assistance should be instructional related. In this way it is not a "welfare" program. However, Title I services are not strictly limited to the classroom. Congressional committees who studied Title I drew up a list of supportive or auxiliary services. Such services include free breakfast, medical exams, dental treatment, and field trips. All these relate to some educational need.*

Q. What are some of the general guidelines?

A. *The compilation Section 141 of the law states:*

"1. Projects must meet the special needs of the educationally deprived children in school attendance areas having high concentrations of children from low income families;

2. Project must be of sufficient size, scope, and quality to give reasonable promise of substantial progress toward meeting these needs."

NOTE: "Sufficient scope" means more than one type of service could be given to a needy child. For instance, a child with reading difficulties may need remedial instruction, eye glasses and meals. The scope of the project should be designed to meet the total need.

Q. What should parents watch for regarding Title I programs?

A. *Parents should be alert to ensure that Title I programs do not duplicate other programs especially if such programs have a history of failure. Title I programs should be a part of the overall compensatory education program which utilizes the resources from other programs and agencies.*

It is advisable that school officials and parents work with representatives of the other agencies in planning for Title I programs. This would prevent duplication of services and promote a more efficient use of all sources. The result could lead to more effective programs.

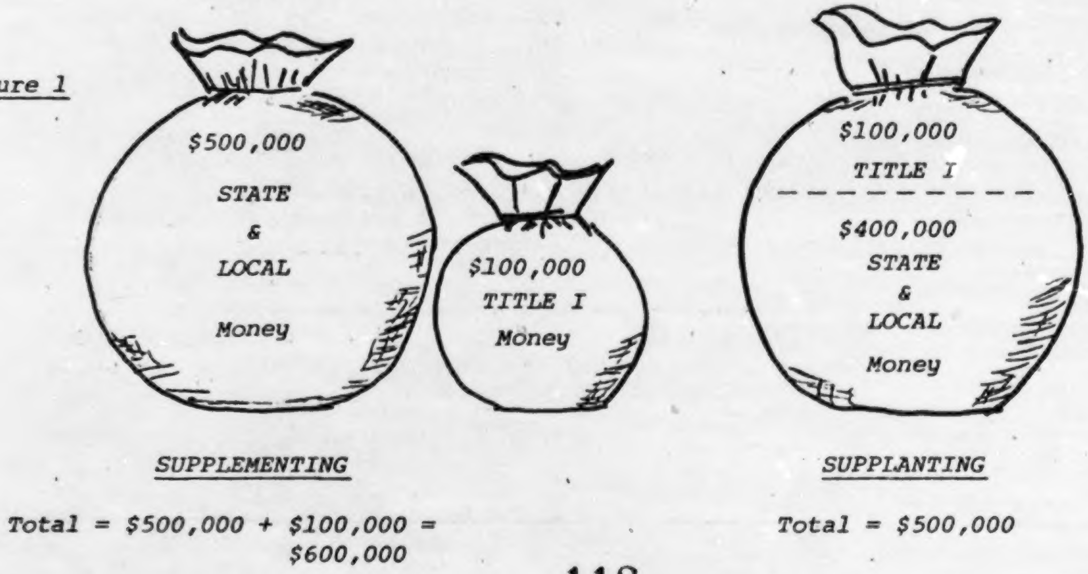
Q. How would the parents of children eligible for Title I funds know that their children are getting the "extra help" intended by designers of Title I?

A. *The "rule of thumb" is to look at what is being provided in non-Title I areas of the school district. Any programs or services paid out of the school district's general operations budget (local and State money) in a non-Title I school should likewise be available to the Title I school.*

The fact of the matter is that no matter what services a Title I program provides, however good they may be, they will most likely not be enough to help the children overcome the learning deficiency if they are not extra services.

NOTE: Title I funds are intended to be used in addition to State and local funds, and not in place of them. In other words, the Title I funds should SUPPLEMENT the State and local funds and NOT SUPPLANT these funds. The following figure (1) illustrates the meaning of supplant.

Figure 1



Q. What is meant by comparable services?

A. *Comparable Services simply means that equal and similar services be provided in all the schools of the same district. That is, all services provided without the use of Title I funds in a non-Title I school should likewise be provided in the Title I school by State and local funds before any Federal funds are used. This ensures that Title I funds supplement and not supplant State and local funds.*

Q. What provisions are made in the law to ensure comparable services being available to all schools within a school district?

A. *In 1970 Congress, by its action toward equalizing services, made comparability part of the Title I law. Public Law 91-230 states:*

"State and local funds will be used in the district of such (local education) agency to provide services in project areas which, taken as a whole, are at least comparable to the services being provided in areas in such districts which are not receiving funds under (Title I). 20 U.S.C. 241 e (a) (3) (c)

NOTE: Each local education agency (LEA) receiving Title I funds must submit a "comparability report" to their respective State educational agencies (SEA) each year for assurance that the Title I schools are receiving comparable services from State and local funds (45 C.F.R. Section 116.26 (b)). The LEA may lose Title I funds if the comparability report shows non-comparability.

Q. Why is comparability important?

A. *According to a Department of Health, Education and Welfare (HEW) report of September 1972, eleven of the nations' largest school districts submitted comparability reports which contained unreliable estimates and figures.*[1]

Another report issued at the same time showed that 79 of the 80 nation's largest school districts had one or more non-comparable schools. This report was made by the Lawyers' Committee for Civil Rights Under Law.[2]

Ensuing conclusions could be made from the above that about seven years and ten billion dollars later that the intent of Title I, to provide compensatory education, had not been totally realized. This constitutes a misuse of compensatory funds.

Q. What is the criteria for eligibility?

A. *Public Law 89-10 states that Title I is meant to serve all educationally deprived children living in low-income areas:*

> *"To provide financial assistance to local educational agencies serving areas with concentrations of children from low-income families to expand and improve their educational programs by various means which contribute particularly to meeting the special educational needs of educationally deprived children."*

Basically, there are two criteria a child must meet to be eligible to participate in Title I programs:

(1) The child must live in the target area. He must be a resident of the area served by the public school, and it does not mean that he has to attend the public school where Title I services are offered.

(2) The child must be educationally deprived. Most school districts interpret this as one who is performing below the expected grade level for his age group.

Q. Do BIA schools qualify for Title I assistance?

A. *Yes, BIA schools qualify for Title I assistance. The BIA acts as the State education agency through each respective area office and to the central office.*

Q. What are some of the duties of the parent advisory councils?

A. *Some of these duties specified in the regulations are:*

(1) To review applications and evaluations of past and present Title I programs;

(2) To make recommendations about the needs of eligible children and how these needs can be met;

(3) To submit comments, if desired, to local educational personnel and the State about the Title I application.

A very important provision is that the council must consist of more than a simple majority of parents. For example, if there are 20 members, at least 12 of these have to be parents. A simple majority is 11, but 12 is more than the simple majority.

The council should not be limited to the above, but the additional duties should be determined jointly by the members of the council and the school administrators. Recall regulations that state parental involvement includes planning, development, and evaluation...

Q. Are Title I programs for Indians different from the others?

A. *All Title I programs are "generally" the same since the objectives are relatively similar. However, a program content for Indian children should differ in a way that the cultural and linguistic differences are taken into consideration.*

Public school districts with Indian population must make sure that the parents of the eligible students be represented on the Title I parent advisory councils.

Role of the Parent Advisory Council

Q. Is there a Federal requirement for parental involvement?

A. *Yes, Public Law 91-230 gave the U.S. Commissioner of Education the power to require parental involvement for any Federally financed education program which he felt might be helpful as a result of parental participation. The Federal Register dated October 14, 1971 printed new Title I regulations requiring each school district with Title I programs to establish district-wide parent advisory councils.*

The regulations state that the parents had to be involved in the planning, development, operation, and evaluation of Title I projects.

Duties and Responsibilities of the Local Educational Agency (LEA)

Q. What are some of the duties of the LEA to the parent advisory council?

A. *The LEA's must support and cooperate with the parent advisory councils and must:*

(1) Provide information the "councils" may need to effectively carry out their duties under the law;

(2) Listen to and consider parental views. The regulations specifically state that parents must be given the opportunity to voice their opinions regarding the children in the Title I target areas and about the Title I application. These viewpoints should be sent to the State Department along with the application.

(3) Set up a procedure to handle all complaints (from parents and the community);

(4) Provide "council" with future plans for Title I projects;

(5) *Describe in the application how parents are to be involved in the planning and development of the project and provide the council with the following information to each parent committee member without charge:*

- (a) *Title I laws*
- (b) *Federal regulations and guidelines about Title I*
- (c) *State regulations and guidelines for Title I*
- (d) *Current and past Title I applications*
- (e) *Current and past Title I regulations*

In addition to the above, any other information that would be useful to the parent council should be given to them by the school district officials.

Q. What other responsibilities do the local educational agencies have?

A. *The other LEA responsibilities under Title I are:*

(1) *Identify the educationally deprived children in the low income areas of the school district and determine their needs;*

(2) *Select the attendance areas and the ensuing project areas;*

(3) *Design and implement projects consistent with the Title I regulations;*

(4) *Coordinate Title I projects with the other compensatory projects in the school district;*

(5) *Maintain adequate fiscal records of the project areas to assure comparability;*

(6) *Make information on the Title I projects available to parents and the public.*

(7) *Evaluate the local Title I program.*

FOOTNOTES

1. *Report on Review of the Implementation of Comparability Provisions, Public Law 91-230, P. 7, HEW Audit Agency*.

2. *See Title I Comparability: A Preliminary Evaluation*. Lawyers' Committee for Civil Rights Under Law, School Finance Project, September 1972.

INTRODUCTION

Bilingual education is a very broad term. The most popular usage has been in describing or referring to Title VII of the Elementary and Secondary Education Act (ESEA). However, "bilingual education" among schools that enroll Indian students may not be referring to Title VII of ESEA when they speak of or apply for grants from such Federal funds as Johnson O'Malley, Title IV of P.L. 92-318, or Title I of ESEA.

In one school, bilingual education may mean an ESL program. In another, it may mean a teacher aide program. Perhaps in another, it may mean a crafts program. Something that is clear is that Johnson O'Malley, Title IV or Title I do not deal with bilingual education wholly. Such Federal programs do not define what bilingual education programs they will fund, nor do they set up criteria or standards as to what programs in "bilingual education" will do.

In essence, bilingual education too often may be whatever the teacher and/or aide make it to be in a particular classroom. Bilingual education as funded through Federal funding which does not set up definitions, criteria, standards, or guidelines as to what bilingual education is or what it does, in effect becomes "catch-all" programs: it helps local economy; it allows for altering regular subjects which may or may not include local crafts, traditional practices to be included in classrooms; and it helps lower pressure from Indian groups pushing for bilingual education, from university linguists, local association of anthropologists, legal aide society, etc.

Too very often schools apply for bilingual programs without conferring with parents or teaching personnel. Consequently, bilingual programs suffer and become negative in nature. In some areas, bilingual programs are highly criticized by parents and teachers. Despite these oppositions, schools continue programs as if to make sure there is failure. In such instances, either bilingual education is not clearly defined, and therefore tends to be negative, or bilingual education is too clear and it is not what parents and/or teachers want.

Parents should become aware of what is existing and possible in the field of bilingual education. Whenever possible, parents should utilize funding which has been specifically authorized for bilingual education and use other Federal sources for needed projects. This may become an important issue because Title VII regulations state that no Title VII funds are to be used for supplanting other funding, which means, in effect, that Federal program and basic program monies already being used are not to be withdrawn from current bilingual programs and utilized in other areas.

The regulations seem to mean that Title VII funding is to be used only for expansion or improvement of existing programs and for new bilingual programs where a school does not have one at present.

BILINGUAL EDUCATION

Q. What is bilingual education?

A. *There are a number of definitions applied to bilingual education. However, the most popular one is that which is applied when referring to Title VII of the Elementary and Secondary Education Act of 1965 (ESEA) (as amended). The rules and regulations of Title VII have defined bilingual education as the use of two languages, one of which is English as a media of instruction.*

As of August 21, 1974, a new act came into existence. P.L. 93-380, or the Education Amendments of 1974, was enacted. Title I, Section 105 of P.L. 83-380 amends Title VII of ESEA.

Q. How does it amend Title VII?

A. *Basically, it divides the bilingual act (Title VII) into three parts:*

Part A - Financial Assistance for Bilingual Education Programs;

Part B - Administration

Part C - Supportive Services and Activities.

In general, it provides a new and expanded set of definitions, makes additions to the listings of authorized activities including activities relating to resource centers, materials development centers, and dissemination/assessment centers; expands preservice training programs; includes assistance for trainees to participate in programs at approved institutions of higher learning (universities, etc); mandates provisions for fellowships for persons preparing to become trainers of teachers in bilingual education programs; revises and restates criteria for evaluation of application; mandates a different composition and selection of community advisory groups; requires consultation of such advisory groups before submission of applications; includes provisions regarding documentation necessary for the Commissioner's approval of nonprofit institutions or organizations of Indian tribes operating elementary and secondary schools for eligible Indian children; and clarifies language regarding the participating children in private schools where the dominant language of the participating children in the nonprofit private school is not the same dominant language spoken by the participating children in the proposed program as submitted.

Q. When does this new amendment go into effect?

A. *Parts B and C have gone into effect as of August 21, 1974. However, Part A does not go into effect until July 1, 1975. In the meantime, Title VII laws are still in effect, unless it openly conflicts with the new law, until June 30 of this year for the funding of current Title VII proposals. The division of bilingual education has published guidelines for applying both laws to current proposals on March 12, 1975.*

Q. What is the intent of the Bilingual Act (Title VII and Title I, Section 105 of P.L. 93-380)?

A. *To provide financial assistance for children with special education needs (children who have limited English speaking ability) to develop and carry out new and imaginative elementary and secondary school programs.*

Congress declared a policy in order to establish equal educational opportunity for all children to encourage establishments and operation of programs of bilingual educational practices, techniques, and methods to provide financial assistance to LEA's and to the State educational agencies to enable them to develop and carry out such programs in elementary and secondary education, including preschools.

Q. What kind of funding has been available?

A. *Section 702 (b) (1) is the Act states:*

> *Except as is otherwise provided in this Title, for the purpose of carrying out the provisions of this Title, there are authorized to be appropriated $135,000,000 for the fiscal year ending June 30, 1974; $135,000,000 for the fiscal year ending June 30, 1975; $140,000,000 for the fiscal year ending June 30, 1976; $150,000,000 for the fiscal year ending June 30, 1977; and $160,000,000 for the fiscal year ending June 30, 1978.*

Q. Do these amounts include that amount which will go to the State educational agency for the coordination of technical assistance to bilingual education programs in the State?

A. *No. $6,760,000 is the authorized appropriation for fiscal year ending June 30, 1974; $7,750,000 for the fiscal year ending June 30, 1975; $7,750,000 for the fiscal year ending June 30, 1976; $8,750,000 for the fiscal year ending June 30, 1977; and $9,750,000 for the fiscal year ending June 30, 1978.*

NOTE: These are authorized appropriation figures which means that the amounts authorized are not necessarily those which are, or will be actually appropriated by Congress. Currently, about $70-$85 million is on the verge of being released for next fiscal year ending June 1976.

Q. What does the term "children with limited English-speaking ability" mean?

A. *C.F.R., Title 45, Part 123 (Title VII of ESEA) defined such as children who come from environments where the dominant language (language most relied upon for communication in the home) is other than English. P.L. 83-830, Title I, Section 105 adds, "limited English-speaking ability when used with reference to an individual, means (a) those who are not born in the United States or whose native language is a language other than English, and (b) those who come from environments where a language other than English is dominant, and, therefore, have difficulty speaking and understanding instruction in the English language."*

Parent Participation and Community Involvement

Q. To what degree are parents to be involved:

A. *P.L. 83-380, Title I, Section 105 assures that applications as submitted by LEA's are to contain assurances that (1) parents of children of limited English-speaking ability, teachers, and where applicable, secondary students, in the areas to be served are consulted in the development of an application for bilingual education programs. § 123.16 c requires that the community advisory group is to be composed of, and selected by parents of children of limited English-speaking ability in areas to be served, and secondary students where applicable.*

Q. How is this different from the previous law?

A. *The previous law required that at least 50% of the community advisory group be parents of children with limited English-speaking ability. In addition to this, LEA's were allowed to select members of such groups.*

Q. What guarantees that community advisory groups will be fully involved and participate wholly?

A. *Applications are to provide assurances that the applying local education agency will consult with a community advisory group at reasonable intervals (in formal public meeting) regarding the administration and operation of the program. The applying* *agency will also provide assurances in the application to provide the advisory group an opportunity to observe periodically all activities of the program. Such agency will also provide such groups with the opportunity to comment on such activities. The applying agency will further assure in the application that provisions will be made to ensure participation of the advisory group in the evaluation of the program. No application will be considered unless the LEA can certify to the Commissioner that opportunities have been provided to the public (upon reasonable notice) to testify or comment upon subject matter of the application.*

Q. Is the applying LEA responsible for providing the names of the community advisory groups to the public?

A. *Yes. There must be evidence that the names, address, and dominant language of the members have been made public (newspapers, general circulation, etc.). Not only that, a statement of purpose must also be made public. Such evidence is to be supplied with the application.*

Q. Are there any provisions made allowing the advisory committee to review and comment upon proposals to be submitted by the LEA?

A. *Yes. Again, no application is to be considered unless the public has had reasonable amount of time to review and comment upon the proposed program. Not only that, a reasonable period (not less than 15 days) should be given to the community advisory group to review and comment upon proposed program before submission of application for assistance to the Commissioner.*

Q. Does the community advisory group have access to reports and records of programs if the LEA is resubmitting application?

A. *Yes. Applicants which received assistance during the fiscal year prior to the fiscal year for which assistance is sought is to furnish copies of the most recent reports and records to the advisory group.*

ELIGIBILITY

Q. Who is eligible to apply?

A. *A Local Educational Agency (LEA) or a combination of such agencies. An institution of higher education applying jointly with a local education agency.*

Q. What is meant by local educational agency?

A. *An agency constituted under a State for administration of service for public elementary and secondary schools. It also includes nonprofit institutions or organizations of an Indian tribe which operate, on or near a reservation, an elementary or secondary school for Indian children which is operated by the Department of Interior.*

Q. Are children who are enrolled in a private school eligible for participation?

A. *Yes. If LEA is going to include students from private schools, then the LEA must provide assurances in the application to provide for participation of such children. Such participation may or may not involve children in a private school whose dominant language is not the dominant language of the children to be served in the public school by the proposed program.*

Q. Who provides administrative direction over the component in which private school children participate?

A. *The applicant is to administer and have control of such a component. Assurances to this effect are to be provided in the application.*

Q. Who is responsible for providing personnel for such components in private schools?

A. *Again the applicant is responsible. Assurances must be made in the application to provide public school or publicly provided personnel. Such personnel should have competence in the dominant language of such private school children to assure a quality program.*

Q. Is the funded program limited to those children with limited speaking ability?

A. *No. As a matter of fact, §123.12 (d) (1) (i) states, "a program assisted under this part shall include such provisions as are necessary to prevent the separation of children by language or ethnic background in any activity included in such programs, unless the applicant demonstrates that such separation for a portion of the school day for specific language learning activities is essential to the achievment of this purpose of this part." It is further stated by (ii) of the same part, "Nothing in this part shall be interpreted or applied to authorize isolation of children of limited English speaking ability by language or ethnic background for a substantial portion of the school day."*

Q. Does this mean that despite the fact that a child of limited English speaking ability is not a member of a low income family that he or she may still participate?

A. *Yes. No child with limited English speaking ability is to be prohibited from participating on the ground that such a child is not a member of a low income family.*

Q. Does income have anything to do with eligibility for participation?

A. *Yes and no. Yes, because to be eligible, schools must have a high concentration of children with limited English speaking ability from low income families. No, because once a school is eligible, all the children with limited English speaking ability are eligible, regardless of their family's income.*

Q. Is it possible for an English speaking child to participate in a bilingual program to learn a second language?

A. *No.*

Q. Is there any provision which ensures that materials and curricula developed through these programs will be distributed to other local educational agencies also receiving assistance under this Act and which has requested copies of such materials?

A. *Yes. There are provisions for making available at a cost not exceeding the actual cost of reproduction, sample copies of any materials resulting from the proposed program to any requesting local educational agency which is receiving assistance*

Q. Is it possible to set aside such Federal funds as Title I of ESEA, Johnson O'Malley, or Title IV of 92-318, which are currently used for bilingual education and apply for funds as provided under the Bilingual Act?

A. *This is a very interesting and crucial question. Federal regulations state that funds as provided by the Bilingual Act is to supplement and not supplant. § 123.12 (f) states the following:*

> *Federal funds made available under this part for any fiscal year shall be so used as to supplement and to the extent practicable, increase the level of funds (including funds made available under Title I of the Elementary and Secondary Education Act of 1965) that would, in the absence of such Federal funds, be made available by the applicant for the activities as described in § 123.12, in no case as to supplant such funds.*

If viewed from a defferent standpoint, the use of such federal funding as Title I of ESEA, Johnson O'Malley, Title IV of Public Law 92-318 for bilingual educational programs is supplanting if Federal funds do exist for the purpose of providing bilingual education as Title VII and section 105 of Title I, Public Law 93-380 does.

Q. Are parochial schools eligible for participation?

A. *No. However, students from such a nonprofit private school may participate if an LEA is funded to do so, as long as such funds are not used in connection with any sectarian activity or religious workshop, or in any school which may prepare students in entering ministry or other religious vocation, or prepare them to teach theological subjects.*

Q. Is there funding available for preservice training or inservice training?

A. *Yes. As a matter of fact any program assisted is to include inservice training and development programs designed to enable such persons to continue to improve their qualifications while participating in such programs.*

Q. Is there any limitations as to where preservice and inservice is to be received?

A. *No. Although Public Law 93-380 has added a new section which would provide funds to an institution of higher education applying jointly with one or more local educational agencies to provide training leading to a degree and/or credential to persons preparing to participate in the program of bilingual education.*

Q. Who gets to participate in the traineeship?

A. *Selection of candidates for traineeship will be made jointly by the Institution of Higher Learning (IHL) and the local educational agency or agencies. Priority is to be given to applicants who are participating in bilingual education programs and those who demonstrate a high interest and competency in a bilingual program.*

Q. What is the amount of the traineeship to be awarded?

A. *The traineeship may not exceed $3,500. Allowable costs are to include stipends, tuition, books, travel, tutoring, counseling, and other training costs related to the traineeship as required by the IHL.*

Q. Is there financial assistance awarded to IHL in developing or strengthening bilingual programs?

A. *Yes. Those IHL who have jointly applied with LEA's may be granted assistance to pay part of the cost of developing and strengthening bilingual programs, which will enable the institution to meet individual needs and encourage, reform, innovate and improve curricula in graduate education, in the structure of the academic profession, and in the recruitment and retention of higher education and graduate school faculties related to bilingual education.*

Q. Is there any assistance for trainers of teachers in the field of bilingual education?

A. *Yes, again Public Law 93-380, Title I, Section 105 adds provisions for fellowship for persons preparing to become trainers of teachers of bilingual education.*

Q. How does one apply?

A. *The person(s) interested must submit an application through an IHL which has been approved to participate. The IHL will then make nominations for fellowship awards among those persons it accepts for study. To be eligible for a fellowship, the individual must be willing to pursue a full time graduate or other programs leading to an advanced degree in bilingual education teacher training. The individual must be a citizen of the United States or if not yet a citizen, the individual must have the intentions of becoming a permanent resident of the United States. The Commissioner will make the final selection of the fellowship applicants.*

Q. What factors does the Commissioner consider in deciding who to choose?

A. *The relative need for teachers, and the likelihood that the nominee will, after fellowship period, pursue a permanent career in bilingual education teacher training.*

Q. What amount is the fellowship?

A. *The fellowship will come in the form of stipends not to exceed $6,000 a year. This will include allowance for dependents. Tuition and fees will be paid out of such an allowance.*

Q. Is it possible for a person desiring to participate in the fellowship to select a University of his/her choice?

A. *Yes. If the university is approved for participation. Universities wishing to participate must request for such participation. The university must have or propose to carry out a graduate program or other programs leading to an advanced degree in the field of training teachers for bilingual education. The university or other IHL may (but need not) submit such request jointly with one or more local educational agency but must consult with one or more such agencies. Such consultation is to be described in the request. The following are to be made known the request:*

> *The number of fellowships which the institution is prepared to sponsor;*
>
> *The nature of the program to be carried out;*
>
> *Information about the faculty, facilities, and equipment relating to program;*
>
> *Other information as requested by the Commissioner.*

APPLICATIONS

Q. How does an LEA apply?

A. *An application is to be submitted to the Commissioner for that fiscal year and shall contain the following:*

1. *an assurance that the activities will be administered under the supervision of the applicant;*

2. *a description of methods of administration for proper and efficient operation of the program;*

3. *a statement of the amount, source, and use of funds available from nonfederal sources for the fiscal year for which the assistance is sought and for that fiscal year preceding it to assume supplementation;*

4. *a description of such fiscal control and fund accounting procedures to assure proper disbursement of and accounting for Federal funds paid to the applicant;*

5. *an assurance that the applicant(s) will cooperate with the Commissioner in the evaluation of the extent to which funds made available have been effective in improving the education opportunities of children of limited English speaking ability. Also the applicant is to submit an annual report and keep such records for further verification. Such reports of performance and evaluation are to be submitted at least twice a year. (averages of reliable and valid test scores or other objective measurements of the success of such programs in meeting objectives as stated in the application are to be included);*

6. *an assurance that provision has been made for children of limited English speaking ability who are not enrolled in the schools of the applicant on a full time basis (Part-time student) to participate. A description of such provisions is to be included in the report;*

7. *a description of provisions made by the applicant for utilization of persons with expertise in the educational problems of children of limited English speaking ability. Also a description which describes the optimum use of cultural and educational resources (i.e. libraries, museums, musical and artistic organizations, educational radio and television outlets.);*

8. *a statement indicating that the appropriate State Educational Agency has been given the opportunity (at least 15 days) to review the proposed program;*

9. *a statement of procedures employed by the applicant to coordinate its proposed program with activities funded under any other law of the U.S., including Title VII of the Education Amendments of 1972 (Emergency School Aid Act),*

10. *a description of the manner and methods by which the applicant has identified the children with limited English speaking ability who are to be reached; measured the degree of such limited English speaking ability for such children; and assessed the need of such children.*

Q. What is required of nonprofit institutions or organizations of Indian tribes operating elementary and secondary schools for Indian children?

A. *In addition to above listed assurance, evidence is that the schools operated prior to the request for funds under this part. In addition to this, there shall be included with the application a description of the school(s). Evidence of nonprofit status is required in order for the Commissioner to approve such organizations as eligible applicants.*

Q. What is meant by evidence of nonprofit status?

A. *§ 12313 (c) lists the following as acceptable evidence:*

a reference to the organization's listing in the Internal Revenue Service's most recent cumulative list of organizations described in the Internal Revenue Code as tax exempt;

a copy of currently valid Internal Revenue Service tax exemption certificate;

a statement from a State-taxing body or the State Attorney General certifying that the organization is a nonprofit organization operating within the State and that no part of its net earnings may lawfully inure to the benefit of any private shareholder or individual;

a certified copy of the organization's certificate of incorporation or similar document if it clearly establishes the nonprofit status of the organization;

a statement by the parent organization (National Parent Organization) that the applicant organization is a local nonprofit affiliate.

CRITERIA FOR COMPETITION FOR ASSISTANCE *attachment*

(Points System)

Applicants in applying for bilingual grant as provided for in the Bilingual Act have to meet certain criteria. To ensure that applicants provide quality programs, points are given. In approving applications for assistance the Commissioner will apply points distributed according to the following criteria.

GENERAL CRITERIA

225 points

1. *Relative need for assistance. (50) The extent to which the educational needs identified and addressed in the application are for programs reaching areas having the greatest need for assistance determined on the following:*

   a. *(10) The geographic distribution of children of limited English speaking ability within the State;*

   b. *(10) The relative need of persons in different geographic areas within the State for the kinds of services and activities earlier described,*

   c. *(10) The extent to which the educational approach, method, or technique to be demonstrated by the program has not previously been the object of assistance of the Act or project areas;*

   d. *(10) The extent to which there is a need for additional demonstration of the educational approach, method or technique involved in the program with respect to the target population for which the program is designed and with respect to bilingual education programs for children with the particular dominant language concerned;*

   e. *(10) The relative educational needs of the children for whom the project is designed,*

2. *Target population and program objectives (25)*

   a. *(5) The extent to which the educational needs identified and addressed in the application are clear and specific in providing bilingual education,* *b. (15) The extent to which evidence presented by documented objective data demonstrates the existence of students with needs as described by the Bilingual Act. (i.e. tests, etc.) Points to be distributed in the following manner:*

(5) The number and percentage of children of limited English speaking ability between the ages of 3 and 18, residing in the school district served by the applicant;

(5) The number of such children enrolled in the school or schools which the proposed project is intended to serve both public and nonpublic;

(5) The percentage of such children for which funds are being requested within the project school(s), public and nonpublic;

3. Results or benefits expected (25)

a. (20) The extent to which the application sets forth quantifiable measurements of the success of the proposed program in attaining objectives stated; (i.e. evaluation)

b. (5) The extent to which the application sets forth provisions for disseminating program results and making materials, techniques, etc. available to persons residing in the school district to be served, the general public, and those concerned with the educational opportunities of children of limited English speaking ability.

4. Approach (65)

a. (20) The extent to which activities are to be defined and that such activities will assure positive results in attaining objectives. (If applicant has received grants for prior fiscal year, to be included are evaluation reports, etc.);

b. (5) The extent to which the applicant proposes to utilize the expertise and cultural and educational resources;

c. (10) The extent to which the applicant describes in detail opportunities for participation of the community advisory group in the planning, implementation, operation, and evaluation of the program proposed. To be included is evidence that suchp participation was encouraged and has occurred;

d. (5) The degree to which the program is sufficiently restricted in size and scope to avoid jeopardizing its effectiveness;

e. (5) *The extent to which the application sets forth:*

A plan for meeting the logistical requirements to include a description of adequate and conveniently available facilities and equipment;

A statement of methods of administration that will ensure proper and efficient operation of the proposed program; and

A statement of fiscal control and fund accounting for funds;

f. (10) *The extent to which the application contains evidence that in the area of resource management:*

The costs of program components are reasonable in relation to the expected benefits;

The proposed program will be coordinated with existing effort;

All possible efforts have been made to minimize the amount of funds requested for purchase of equipment necessary to implement programs;

g. (10) *The extent to which the proposed program is designated to facilitate the continuation of such program as part of the regular school program of the applicant LEA upon availability of assistance under the Bilingual Act.*

5. *Staff (60 points) The extent to which the application:*

a. (10) *Sets forth adequate staffing plan including provisions for making maximum use of the best available staff capabilities including the director;*

b. (10) *Provides for continuing training of professional and paraprofessional staff which will assist the applicant in increasing the effectiveness of the proposed program;*

c. (40) *Indicates that the personnel to be employed in the program possesses qualifications relevent to the objectives of the program.*

FUNDING CATEGORIES

No points listed

The Commissioner may make awards on a project period basis for the duration which reflects the minimum period needed to carry out the demonstration. Applications for the continuation of projects will not be competitive with applications for new programs. Only if funds are insufficient to support all satisfactory continuing programs, applications will be rated under the criteria. If a project period has expired and assistance is still needed, the application for further assistance is to be evaluated and rated in accordance with the criteria (as earlier described) in competition with other applications evaluated as such. In approving applications, the Commissioner is to take into consideration any recommendation offered by the State Educational Agency as provided for in the Bilingual Act.

TRAINING

The following criteria is to be followed in training activities in cases where institutions of higher learning apply jointly with LEA's. (90 points)

1. (10) The extent to which the applicants possess demonstrated competence and experience in bilingual education. Such applicants (LEA and IHL) are to provide evidence of the following:

The number of bilingual students enrolled;

The number of bilingual personnel employed;

The nature and type of involvement within bilingual education local educational agency(s);

2. (10) The extent to which a program or project leads toward a degree/credentials in bilingual education.

3. (10) The extent to which a program or project is an intregral part of the institution.

4. (10) The extent to which the program or project will increase the capability of an institution to train bilingual educational personnel.

5. (10) The extent to which the proposed program or project is coordinated with or supported of, local educational agency projects or other projects funded.

6. (10) The extent to which the proposed program or project is directed toward the educational personnel needs of a particular school district(s) serving children with limited English speaking ability.

7. (10) The extent to which the proposed program includes effective procedures for evaluating the impact of the program or project.

8. (10) The extent to which the trainees will be trained and be able to teach in academic subjects in the non-English language involved.

9. (10) The extent to which the proposed program or project is directed toward training education personnel to identify and deal with individual learning problems related to limited non-English speaking ability.

CURRICULUM ACTIVITIES

No points listed

The Commissioner is to apply the following criteria to those applications submitted for centers.

1. The extent to which the center will result in the development of educational services, materials, and curricula for bilingual education in the areas of greatest need and with respect to language groups for which the need for curriculum materials development is particularly acute;

2. The extent to which the center will have an effective and efficient delivery system of services for bilingual education programs;
3. The extent to which the center will have the administrative capability to respond to the need for bilingual education programs; and
4. The extent to which the center has the resources to carry out the proposed activities.